(4)

Supreme Court, U.S.
FILED
MAY 14 2004
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Case No. 03-931

IN THE SUPREME COURT OF THE UNITED STATES

State of Florida,

Petitioner,

v.

Joe Elton Nixon,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

JOINT APPENDIX
VOLUME I

Eric Freedman*
250 West 94th Street
New York, NY 10025

Armando Garcia
P.O. Box 324
Quincy, FL 32353

Counsel for Respondent

Carolyn M. Snurkowski*
Asst. Deputy Attorney General

Curtis M. French
Sr. Assistant Attorney General

Office of the Attorney General
The Capitol
Tallahassee, FL 32399-1050

Counsel for Petitioner

Certiorari filed December 22, 2003
Certiorari granted March 1, 2004

* *Counsel of Record*

Case No. 03-931

IN THE SUPREME COURT OF THE UNITED STATES

State of Florida,

Petitioner,

v.

Joe Elton Nixon,

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ON PETITION FOR WRIT OF CERTIORARI
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JOINT APPENDIX
VOLUME I

Eric Freedman*
250 West 94th Street
New York, NY 10025

Armando Garcia
P.O. Box 324
Quincy, FL 32353

Counsel for Respondent

Carolyn M. Snurkowski*
Asst. Deputy Attorney General

Curtis M. French
Sr. Assistant Attorney General

Office of the Attorney General
The Capitol
Tallahassee, FL 32399-1050

Counsel for Petitioner

Certiorari filed December 22, 2003
Certiorari granted March 1, 2004

* *Counsel of Record*

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IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-CF-2324

STATE OF FLORIDA, :

v. :

JOE ELTON NIXON, :

Defendant. :

_____ :

DEMAND FOR DISCOVERY

Defendant hereby demands that the prosecutor disclose to defense counsel and permit defense counsel to inspect, copy, test and photograph the information and material specified in Florida Rules of Criminal Procedure 3.220(a) (1) and (2).

In addition, defendant requests that the prosecutor disclose to defense counsel any prior inconsistent statements of state witnesses; promises or assurances to any witnesses of immunity, leniency, or recommendations of a specific sentence in the instant case; promises or assurances to any witnesses of leniency or reward in other criminal prosecutions or investigations; threats to prosecute any witness; all information pertaining to pending or prior formal charges or prior convictions of any state witness in the outcome of the instant case; all information regarding bias or prejudice of any state witness toward defendant; whether any eyewitness, even though not called by the state, has identified someone other than the

defendant as perpetrator of the crime; and descriptions of the perpetrator of the crime which do not match the defendant.

_____
MICHAEL M. CORIN
OFFICE OF THE PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

(Certificate of Service omitted in printing)

84-2324 CASE NUMBER

STATE OF FLORIDA

vs.

JOE ELTON NIXON,

Defendant(s).

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

ANSWER TO DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to defendant's DEMAND FOR DISCOVERY and Florida Rule of Criminal Procedure 3.220, and furnishes the following:

1. The names and addresses of all persons know to the prosecutor at the present time to have information which may be relevant to the offense charged and to any offense with respect thereto are –

See Attached Exhibit "A"

2. Listed below are the statements of witnesses whose names were furnished in #1 above and copies of said statements or reports are not attached to defense counsel's copy of this Answer.

See Attached Exhibit "B"

3. There are **not** written or recorded statements of the defendant and copies are not attached to defense counsel's copy of this Answer.

The defendant did **not** make oral statements to the following persons, and the substance of those statements is listed below.

STATEMENTS MADE TO	SUBSTANCE OF STATEMENT
Wise/Campbell	Admitted murder (see reports for details)
John Nixon	Admitted murder
Wanda Robinson	Admitted murder

4. There are not written or recorded statements of codefendants and copies are not attached to defense counsel's copy of this Answer. The codefendant(s) did not make oral statements to the following persons, and the substance is listed below.

STATEMENTS MADE TO	SUBSTANCE OF STATEMENT

5. There is not recorded Grand Jury testimony of the defendant.

6. There are tangible items which were obtained from or belong to the defendant and are described below.

Photograph, fingerprints, boots, clothes, blood, hair, signatures, comb, knife, charm, assorted coins, wallet with contents

7. Information relative to the offense was not provided by a confidential informant.

8. There was not electronic surveillance of the premises of the defendant or of conversation to which the defendant was a party.

9. There was **not** a search and seizure and documents related to any search and seizure are not attached.

10. There are ~~not~~ reports or statements of experts, and copies of said reports or statements are not attached to defense counsel's copy and listed below.

Autopsy report
Toxicology report

11. The tangible evidence known to the prosecutor in addition to items mentioned in #6 preceding is listed below.

See Attached Exhibit "C"

Defense counsel is hereby permitted, at a time and place mutually agreed upon by counsel for the State and for the defense, or as otherwise ordered by the Court, to inspect, copy, test and/or photograph the foregoing statements, documents, test results, and/or tangible items of evidence.

12. The State has herein submitted its complete ANSWER TO DEMAND FOR DISCOVERY pursuant to F.R.Cr.P. 3.220 and respectfully demands the defense to submit its corresponding witness list within seven days and disclose to the State and permit them to inspect, copy, test and/or photograph the information and material in the defendant's possession or control as listed in FRCrP 3.220 within fifteen days after receipt of this ANSWER TO DEMAND FOR DISCOVERY.

DONALD S. MODESITT
STATE ATTORNEY - SECOND JUDICIAL CIRCUIT

_____
JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

EXHIBIT "A"

1. Wayne and Debbie Connell - 5300 Williams Rd. #4
2. Johnnie Lewis Tucker - 2710 Country Club, Apt. #46
3. John Nixon - c/o Paul Phillips
4. Wanda Robinson - 910 Millard St.
5. Willie James Harris - 1810 Pasco St., #5
6. James Edward Nixon - Rt. 2, Box 230, Hinson Heights, Havana
7. Virginia Ann Meeks - Rt. 2, Box 230, Hinson Heights, Havana
8. Pamela Sperling - 2731 Blairstone Rd., Apt. 157
9. Jeff Attaberry - TPD
10. Mary Attaberry - 2725 Vassar Rd.
11. Gregory A. Cleary - 5618 Hoover Ct.
12. Susan T. Cleary - 5618 Hoover Ct.
13. Ted Cox - 2201 Jim Lee Rd.
14. Jim Turvaville - c/o Acme New and Used Auto Parts, Inc., 170 Capital Circle S.E.
15. Thomas Igles- 2022 Martin Luther King Blvd.
16. Franklin L. Jones - 4905 Buck Lake Rd.
17. Mary L. Todd - 1112 S. Magnolia #D-101
18. Judith Hill - 1810 Pasco St., Apt. 5
19. Evelyn Harris - 1810 Pasco St., Apt. 5
20. Henry Hunter, III - 1810 Pasco St., Apt. 5
21. Linda Gallagher - 1009 Paul Russell Rd.
22. Mary Louise Still - Rt. 12, Box 923, Oakridge Rd.
23. David Bickner - 2226 Pontiac Dr.
24. Jo Ann Plachy - 2713 DeBussey Ct.
25. Deputy Sturmer - LCSO
26. Deputy Coughlin - LCSO
27. St. Ash - LCSO
28. Det. Livings - LCSO
29. Det. Miller - LCSO
30. Sgt. Daws - LCSO
31. Sgt. Gunter - LCSO
32. Deputy Koester - LCSO

33. Deputy Fox - LCSO
34. Capt. Dale Wise - LCSO
35. Major Larry Campbell - LCSO
36. Dick Simpson - LCSO
37. Deputy Carroll Hurdle - LCSO
38. Det. Paul Phillips - LCSO
39. Deputy Lee - LCSO
40. Trooper W.E. Glass - FHP, Crestview
41. Capt. Brett - T.F.D.
42. D/C Love - T.F.D.
43 Dr. Ben Turner - Medical Examiner's Office
44. Nayola Darby - FDLE
45. Karen Cooper - FDLE
46. Dr. John H. Hebb - International Clinical Lab, 5 Park Plaza, Nashville, Tenn.
47. Dr. James Patty - 1541 Medical Dr., Suite 120-A

EXHIBIT "B"

Reports

Deputy Sturmer (3 pgs)
Deputy Hubbard (1 pg)
Trooper W.E. Glass - FHP - (1 pg)
Capt. Brett (2 pgs)
Det. Livings - (13 pages)
Det. Livings - (1 pg)
Det. Miller - (7 pgs)
Det. Phillips (11 pgs.)
Sgt. Daws (4 pgs)
Capt. Wise (4 pgs)
Sgt. Ash - (4 pgs)
Major Campbell (12 pgs.)
Sgt. Gunter (5 pgs)
Deputy Hurdle (3 pgs)
Deputy Koester (3 pgs)
Deputy Koester (1 pg)
Deputy Fox (3 pgs)

Statements

John Nixon (2)
Wanda Robinson (2)
Mary and Jeff Attaberry
Virginia Meeks
Judith Hill
James Nixon
Willie James Harris
Dr. James Patty

EXHIBIT "C"

(Crime scene)

Prior court files
Initial scene
- See chain of custody list items #1- #21
Photo line-up
Soil sample
M.G. convertible and contents
Pictures of victim
Consent form
Victim's hands
Latents from M.G.
Photographs
Flow chart
Driver s license application
Pawn shop ticket
Rings (2)
Diagrams (2)
Governor's Square Mall
Sales Ticket
Sears battery
Vehicle registration
Brown bag with red and white shirt
Car keys
Tire casing
Gas cap
Miranda form
Victim's fingerprints
Shoes with socks
Blue jeans and other assorted tools
Crime scene sketches
Time cards - LCSD
Swabs from victim
Latent prints from victim's apt.
Pictures of tire tracks

Pictures of shoe tracks

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA

vs. AMENDED ANSWER TO
DEMAND FOR DISCOVERY

JOE ELTON NIXON,

Defendant.

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 1:

Sandra Brooks
Chief of Personnel and Training
2590 Executive Center Circle East
Berkley Bldg., Room 108
Tallahassee, FL

Doug Barrow
FDLE

Dennis Counsel
University Pawn Shop
Tallahassee, FL

DONALD S. MODESITT
STATE ATTORNEY

JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA

vs.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 1:

Ann Council (juvenile), 1513 S. Magnolia Dr.
Doretha Mungen, FDLE
Norma Clouser, Dept. of Highway Safety
Custodian of Records, Division of Driver's License,
Department of Highway Safety

Item No. 2:

Copies of the following statements are attached:

1. John Dixon and Wanda Robinson
2. Jeff Attaberry
3. Mary Attaberry
4. Virginia Meeks
5. Judith Hill

6. James Nixon
7. Willie James Harris
8. Pamela Sperling

Item No. 10:

Report by Karen Cooper dated 9/27/84 (attached)
Report by Doretha Mungen dated 9/24/84 (attached)

Item No. 11:

Copy of pawn ticket (attached)

DONALD S. MODESITT
STATE ATTORNEY

JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA

vs.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 1:

James L. Outland, FDLE

Item No. 10:

Report by James Outland

DONALD S. MODESITT
STATE ATTORNEY

JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA

vs.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 11:

State of Florida employment applications of victim. (attached)

DONALD S. MODESITT
STATE ATTORNEY

JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA

vs.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 11:

Driver's license records
Prior booking cards (Leon County Jail)
Note to Joe Davis (items #2 and #3 are items previously identified by James Outland for handwriting comparison)

WILLIAM N. MEGGS
STATE ATTORNEY

JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA

vs.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 1:

Wanda Robinson
2501 Holton Street, Apt. D 220
Tallahassee, FL

Thomas Igles
2525 Texas Street, Apt. H-223
Tallahassee, FL

Hugo C. Pribor, M.D., Ph.D. or his designated assistant
5 Park Plaza
Post Office Box 70
Nashville, Tenn.

Correctional Officer Tony Revell
Leon County Jail

Barbara Fields
Division of Child Services
HRS
Ambassador Building, Apalachee Parkway
Tallahassee, FL

Item No. 3:

Thomas Igles — Admitted murder

Item No. 10:

Dr. Patty's office record (copy attached)

Item No. 11:

Death certificate

WILLIAM N. MEGGS
STATE ATTORNEY

JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA

vs.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 1:

Wanda Jones, Program Manager
Tallahassee Housing Authority
2940 Grady Road
Tallahassee, Florida 32312

WILLIAM N. MEGGS
STATE ATTORNEY

JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324-CF

STATE OF FLORIDA,

v.

JOE ELTON NIXON,

Defendant.

DEFENDANT'S ANSWER TO DISCOVERY

The Defendant, JOE ELTON NIXON, by and through the undersigned attorney, and pursuant to Rule 3.220(b)(3), Florida Rules of Criminal Procedure, provides the State with a list of witnesses (additional address information to be supplied when available);

Betty Nixon, 1700 Joe Louis Street, Apt. 178,
Tallahassee, Florida

Mattie Ingram, Blakely, Georgia

Marie Wembley, 330 Arlington Street,
Blakely, Georgia

Minister Nixon, Hinson Heights, Havana, Florida

John Nixon, Gordon River Apartments, #10-E
Naples, Florida

Vera Lee Igles, 637 Church Street, Blakely,

Georgia

Wayne Wallace, HRS, Tallahassee, Florida

Bob Newkirk, HRS, Tallahassee, Florida

Fletcher Pye, 4800 St. Augustine Road,
Tallahassee, Florida

Tom Igles, 2525 Texas Street, Apt. H-223
Tallahassee, Florida

Wanda Robinson, 2501 Holton Street, Apt. D-220
Tallahassee, Florida

Correctional Officer W. Forrest, Leon County Jail

Correctional Officer M. Carter, Leon County Jail

Lamar Nixon

Paul Nixon

Doris Nixon

Virginia Nixon Meeks, Hinson Heights,
Havana, Florida

Thomas Nixon

Joseph Nixon

John D. Nixon, c/o Det. Paul Phillips, Leon
County Sheriff's Department

Ivey Nixon

Deputy James Clifton, Leon County Sheriff's Office

Tracey Moulton, Blakely, Georgia

Antoinette Thomas, Oak Ridge Road, Woodville, Florida

Mother Jackson, Church of Christ Written in Heaven, either Woodville, Florida, or 108 Henderson Road, Tallahassee, Florida

Patricia Brown

JoAnn Slay, Post Office Drawer 391, Quincy, Florida 32351

Charlie Cook, Probation Officer, Quincy, Florida

Steve Kaufman, Probation Officer, Tallahassee, Florida

Pursuant to Rule 3.2209(b)(4)(iii) of the Florida Rules of Criminal Procedure, and furnishes the following list of tangible papers:

Records - Pineview Elementary School, Tallahassee, Florida

Records - Nims Middle School, Tallahassee, Florida

Records - Godby High School, Tallahassee, Florida

Records - Coastal Lumber Company, Havana, Florida

Records - Dozier School for Boys, Marianna, Florida

Records - HRS Halfway House, Holly Hills, Florida

Records - Jack Eckerd Camp, Milton, Florida

Court Records - Blakely, Georgia (Early County, Georgia)

Court Records - Juvenile and Felony Divisions, Circuit Court, Leon County, Florida

Court Records - Circuit Court, Gadsden County, Florida

County Jail Records, Leon County, Florida

County Jail Records, Gadsden County, Florida

County Jail Records, Early County, Georgia

Records from the Department of Corrections, Tallahassee, Florida

Records from the Leon County Sheriff's Department, Tallahassee, Florida

Records from the Criswell House, Tallahassee, Florida

Respectfully submitted,

MICHAEL M. CORIN
Assistant Public Defender
Second Judicial Circuit
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324-CF

STATE OF FLORIDA,

v.

JOE ELTON NIXON,

Defendant.

DEFENDANT'S AMENDED ANSWER
TO DEMAND FOR DISCOVERY

COMES NOW the Defendant, JOE ELTON NIXON, through his undersigned attorney and pursuant to Rule 3.220(b)(3) of the Florida Rules of Criminal Procedure, and provides the State with the following list of additional witnesses:

Robbie Adams
School Records Section
Leon County Schools
Tallahassee, Florida

Brian Henry
Leon County Sheriff's Department

Linda Johnson
Leon County Sheriff's Department

Respectfully submitted,

MICHAEL M. CORIN
Assistant Public Defender
Second Judicial Circuit
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324-CF

STATE OF FLORIDA,

v.

JOE ELTON NIXON,

Defendant.

DEFENDANT'S AMENDED ANSWER
TO DEMAND FOR DISCOVERY

COMES NOW the Defendant, JOE ELTON NIXON, through his undersigned attorney and pursuant to Rule 3.220(b)(3) of the Florida Rules of Criminal Procedure, and provides the State with the following list of additional witnesses:

Marla Hayes
Arthur G. Dozier School for Boys
Marianna, Florida

Elbert Dennis (present address unknown)

Dr. Daniel A. Kauffman (present address unknown)

Dr. Griswold (present address unknown)

Mr. Peeples
Assistant Principal
Nims Middle School
Tallahassee, Florida

Mrs. Dia Moore
Nims Middle School
Tallahassee, Florida

Sandra A. Walsh (present address unknown)

Tom Heiman (present address unknown)

Andrew T. Dozier (present address unknown)

L.T. Pittman
Arthur G. Dozier School for Boys
Marianna, Florida

James Strong
Arthur G. Dozier School for Boys
Marianna, Florida

Steve Mullis (present address unknown)

Lennox E. Williams
HRS
Panama City, Florida

Roy C. McKay
Arthur G. Dozier School for Boys
Marianna, Florida

William Cummings
HRS
Tallahassee, Florida

Wendy Mills
Apalachee Community Mental Health Services
Tallahassee, Florida

Elizabeth Stribling

Apalachee Community Mental Health Services
Tallahassee, Florida

G.C. Omer, III, Psychologist
Reception and Medical Center
Lake Butler, Florida

J.F. Mowbray
Reception and Medical Center
Lake Butler, Florida

B.J. Hardouwin
Classification Specialist
Reception and Medical Center
Lake Butler, Florida

F. Simmons
Classification Specialist
Reception and Medical Center
Lake Butler, Florida

J.C. Wolfe
Classification Specialist
Baker Correctional Institution
Olustee, Florida

J.J. O'Hern
Baker Correctional Institution
Olustee, Florida

R.D. Jones
Baker Correctional Institution
Olustee, Florida

Mr. Fish
Baker Correctional Institution
Olustee, Florida

Pursuant to Rule 3.220(b)(4)(iii) of the Florida Rules of Criminal Procedure, and furnishes the following list of tangible papers:

Records from the Cedar Halfway House
Holly Hills, Florida

Records from the Seminole Group Treatment House
Goldenrod, Florida

Records from the Eckerd Camp - E-MA-CHAMEE
Milton, Florida

Records from the Apalachee Community Mental
Health Services
Tallahassee, Florida

Respectfully submitted,

MICHAEL M. CORIN
Assistant Public Defender
Post Office Box 671
Tallahassee, Florida 32301
(904) 488-2458

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA

vs.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 11:

FDLE Lab report dated February 4, 1985 (copy attached).

WILLIAM N. MEGGS
STATE ATTORNEY

JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-23240-CF

STATE OF FLORIDA,

v.

JOE ELTON NIXON,

Defendant.

DEFENDANT'S AMENDED ANSWER
TO DEMAND FOR DISCOVERY

COMES NOW the defendant, JOE ELTON NIXON, through his undersigned attorney and pursuant to Rule 3.220(b)(3) of the Florida Rules of Criminal Procedure, and provides the State with the following list of additional witnesses and/or updated addresses:

Tom Heiman
c/o The Guidance Clinic
Milton, Florida

Andrew Dozier
Behavior Specialist
Florida State Hospital
Chattahoochee, Florida

Elbert Dennis
Bay County School Board
Panama City, Florida

The following witnesses last known address was in care of Camp E-MA-CHAMEE, Route 1, Box 178A, Milton, Florida 32570:

Nancy Cupit
Rebecca Braxton
Segred Belcher
Lou Barrington
Keith Paulk
Tony Starnes
David VanSuol
Tom Range

Respectfully submitted,

MICHAEL M. CORIN
Assistant Public Defender
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA,

vs.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 1:

Mary Reynolds
1521 Mission Road

Ernest Gene Kilpatrick
806 Coble Dr.

All witnesses listed by the defense.

WILLIAM N. MEGGS
STATE ATTORNEY

JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA,

vs.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 1:

Officer Eldridge, TPD

Officer Debra Riley, TPD

WILLIAM N. MEGGS
STATE ATTORNEY

ANTHONY S. GUARISCO, JR.
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
AND FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324-CF

STATE OF FLORIDA,

v.

JOE ELTON NIXON,

Defendant.

DEFENDANT'S AMENDED ANSWER TO DISCOVERY

The defendant, JOE ELTON NIXON, by and through the undersigned attorney, and pursuant to Rule 3.220(b)(3), Florida Rules of Criminal Procedure, provides the State with the following list of additional witnesses.

1. Dr. M.L. Ekwall
   1889-20 Professional Park Circle
   Tallahassee, Florida 32308

2. Dr. Alan L. Doerman
   1126 Lee Avenue
   Tallahassee, Florida 32303

Pursuant to Rule 3.220(b)(4)(iii), Florida Rules of Criminal Procedure, the defendant furnishes the following list of tangible papers:

1. Report of Dr. M.L. Ekwall dated June 17, 1985.

2. Report of Dr. Alan L. Doerman dated June 4, 1985.

Respectfully submitted,

MICHAEL M. CORIN
Assistant Public Defender
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA,

v.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 1:

Jim Story
Early County Sheriff's Office
South Franklin Blvd
Blakely, Ga. 31723

Mike Thomas
203 E. South Blvd
Blakely, Ga. 31723

Harris Hodges
Dept. of Corrections
Blakley, Ga. 31723

WILLIAM N. MEGGS
STATE ATTORNEY

ANTHONY S. GUARISCO, JR.
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA,

vs.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

JOE ELTON NIXON,

Defendant.

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 1:

Theresa Kolanko, 1420 Fisher Lane, Apt. D, Tallahassee

Dr. John B. Sanders, 216 Ausley Road, Tallahassee

Charles Brantley, Division of Motor Vehicles, Dept. of Highway Safety, Tallahassee

Norma Clouser, Division of Motor Vehicles, Dept. of Highway Safety, Tallahassee

Clay Keith, Division of Drivers License, Dept. of Highway Safety, Tallahassee

Alan Cochran, Division of Drivers License, Dept. of Highway Safety, Tallahassee

Capt. Joe Davis, LCSD (Jail)

Fletcher Pye, 4800 St. Augustine Rd., Tallahassee

Det. Carl Bennett, LCSD

Det. John Franklin, LCSD

W. Forrest, LCSD (Jail)

M. Carter, LCSD (Jail)

Betty Durr, FDLE

WILLIAM N. MEGGS
STATE ATTORNEY

ANTHONY S. GUARISCO, JR.
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA,

vs.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Please find attached a tentative list of evidence for use at trial. Please contact the undersigned if there are any questions or to examine these items.

WILLIAM N. MEGGS
STATE ATTORNEY

JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA,

vs.

JOE ELTON NIXON,

Defendant.

AMENDED ANSWER TO
DEMAND FOR DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Answer to Demand for Discovery. The State's Answer to Demand for Discovery is amended to include the following:

Item No. 1:

Johnny Danzy, Leon County Sheriff's Department
(for identification of known prints only)

WILLIAM N. MEGGS
STATE ATTORNEY

JAMES C. HANKINSON
Assistant State Attorney

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324-CF

STATE OF FLORIDA,

v.

JOE ELTON NIXON,

Defendant.

DEFENDANT'S AMENDED ANSWER TO DISCOVERY

The Defendant, JOE ELTON NIXON, through the undersigned attorney, provides the State with the attached tentative list of defense exhibits numbered 1 through 49. You have copies of all exhibits. Please advise immediately if it will be necessary for me to subpoena records custodians for any of the documents listed.

Respectfully submitted,

MICHAEL M. CORIN
Assistant Public Defender
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

(Certificate of Service omitted in printing)

IN RE: State of Florida v. Joe Elton Nixon
Case No. 84-2324-CF

List of tentative defense exhibits:

1. Complaint card from the Leon County Sheriff's Office; Complaint Card #84-26683.

2. Dr. Doerman's report.

3. Dr. Ekwalls' report.

4. California Achievement Test dated December 30, 1975, and February 20, 1976.

5. Presentence Investigation from Gadsden County Circuit Court, Case No. 81-88.

6. Presentence Investigation Report from Leon County Circuit Court, Case No. 83-2939.

7. Order of Probation from Early County, Georgia, Case No. 80-0085.

8. Test report dated May 1, 1975, from Frank Walker Associates from documents supplied by Camp E-MA-CHAMEE.

9. Discharge Summary dated August 1975 from Camp E-MA-CHAMEE.

10. Transfer Summary dated August 19, 1974, from Seminole Group Treatment Home to Camp E-MA-CHAMEE.

11. Prefurlough Study dated August 18, 1975, prepared by Newkirk and Cummings.

12. Eckerd Camper application form dated March 25, 1974, prepared by Newkirk.

13. Family Conference Report dated August 30, 1974, prepared by Braxton, Camp E-MA-CHAMEE.

14. Evaluation Report dated May 14, 1974, prepared by Segrid Belcher, Camp E-MA-CHAMEE.

15. Special Conference Report prepared by Nancy Cupit, undated, Camp E-MA-CHAMEE.

16. Family Conference Report dated August 22, 1975, prepared by Nancy Cupit, Camp E-MA-CHAMEE.

17. Family Conference Report dated March 28, 1975, prepared by Nancy Cupit, Camp E-MA-CHAMEE.

18. Family Conference Report dated January 31, 1975, prepared by Nancy Cupit, Camp E-MA-CHAMEE.

19. Progress Review from Baker Correctional Institution dated April 13, 1982.

20. Progress Review from Baker Correctional Institution dated October 25, 1982.

21. Progress Review from Baker Correctional Institution dated April 29, 1983.

22. Presumptive Parole Release Date Commission Action dated June 2, 1982.

23. Classification and Admission Summary from the Department of Corrections dated November 30, 1984.

24. Psychological Screening Report from the Department of Corrections dated September 28, 1981, prepared by G.C. Omer, III.

25. Classification and Admissions Summary from the Department of Corrections dated September 24, 1981.

26. Uniform Commitment to the Custody of the Department of Corrections, Leon County Case No. 83-2939, dated August 27, 1984.

27. Photographs of Joe Elton Nixon.

28. Referral for Admission from Training School, dated August 1, 1972.

29. First Commitment Coversheet, dated February 23, 1972 until August 15, 1972.

30. Psychiatric Consultation Followup, dated August 10, 1972, prepared by Daniel A. Kaufman, M.D.

31. Second Commitment Coversheet, dated March 1, 1974 until March 5, 1974.

32. Predisposition Report prepared February 20, 1974, by Newkirk and Cummings.

33. Psychiatric Evaluation dated March 22, 1972, prepared by James F. Griswold, M.D.

34. Progress Review, dated September 30, 1973, prepared by Newkirk and Cummings.

35. Progress Report dated May 1, 1974, prepared by Sandra Walsh from the Seminole Group Treatment Home.

36. Memorandum dated February 27, 1974 to Richard Rachin, Chief, Bureau of Group Treatment, from Sue Cituk.

37. Letter dated March 5, 1974, from Lennox Williams to Mr. and Mrs. Nixon concerning transfer of Joe to Seminole Group Treatment Home.

38. Commitment to Division of Youth Services, Leon County Circuit Court, Juvenile Division, Case No. 75-496, dated November 7, 1975.

39. Predisposition Report dated December 4, 1975, prepared by Newkirk and Cummings.

40. Prefurlough Study dated October 19, 1976, prepared by Paul Entzminger and Newkirk.

41. Letter dated May 3, 1976 from Lennox Williams to Mr. and Mrs. Nixon.

42. Letter dated March 11, 1976 from William Cummings to Roy McKay.

43. Memorandum dated February 20, 1976, from Roy McKay to Lennox Williams.

44. Letter dated February 3, 1976 from William Cummings to Lennox Williams.

45. Letter dated February 20, 1976 from George M. Wood to Lennox Williams.

46. Furlough Agreement dated October 30, 1976.

47. Psychological Evaluation dated April 29, 1975 prepared by Tom Heiman.

48. Psychological Evaluation dated February 19, 1974 prepared by Apalachee Community Mental Health Services, specifically Wendy Miles and Elizabeth Stribling.

49. Third Commitment Coversheet dated December 8, 1975 to October 30, 1976.

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324-CF

STATE OF FLORIDA,

v.

JOE ELTON NIXON,

Defendant.

MOTION TO PROVIDE COPIES OF DEPOSITION TRANSCRIPTS

The Defendant moves this Court for its Order directing that the herein listed Court Reporter provide counsel for the State and counsel for the Defendant each with a copy of the transcript of testimony taken upon oral deposition of the following witnesses:

WITNESSES	COURT REPORTER	DATE
James Outland	Loretta Jackson	1/17/85
Doretha Mungen		
Doug Barrow		
Dennis Council		
Norma Clouser		
Sandra Brooks		
Wayne Connell		
Willie James Harris		
Gregory A. Cleary		
Ted Cox		
Jeff Attaberry		

Mary Attaberry		
Jim Turvaville		
Mary L. Todd		
Ann Council		
Trooper Glass	Loretta Jackson	1/18/85
Johnnie Lewis Tucker		
Judith Hill		
Evelyn Harris		
Henry Hunter, III		
Linda Gallagher		
Mary Louise Still		
David Bickner		
JoAnn Plachy		
James Edward Nixon	Lisa Eslinger	1/21/85
Deputy Sturmer		
Sgt. Ash		
Sgt. Daws		
Sgt. Gunter		
Deputy Koester		
Deputy Fox		
Dick Simpson		
Det. John Livings	Lisa Eslinger	1/22/85
Det. John Miller		
Deputy Carroll Hurdle		
Deputy Lee		
Capt. Brett		
Dr. James Patty		
Dr. Ben Turner		
Det. Paul Phillips		
Nayola Darby		
Karen Cooper		
Susan Cleary	Lisa Eslinger	1/23/85
Tim Coughlin		

Capt. Dale Wise
Major Larry Campbell

As grounds for this motion counsel for the Defendant would show as follows:

1. The Defendant is charged with the offenses of Murder in the First Degree, Kidnapping, Robbery and Arson in Case Number 84-2324-CF.

2. The Defendant has pled not guilty in this case, and it is set for trial by jury on March 26, 1985.

3. Plea negotiations will apparently not resolve the case and trial by jury is probable.

4. The Defendant is indigent and is unable to bear the costs of deposition transcripts. In accordance with the Constitutions of the State of Florida and of the United States of America, and pursuant to the Florida Rules of Criminal Procedure, the Defendant asserts that copies of the deposition transcripts are needed to insure that he receives due process of law, equal protection of the laws, a fair trial, effective assistance of counsel, and to adequately confront the witnesses against him at trial.

5. Copies of the deposition transcripts will be of significant assistance to both counsel for the Defendant and counsel for the State in preparing for trial.

6. James C. Hankinson, the Assistant State Attorney who is prosecuting this cause joins in this motion.

WHEREFORE, the Defendant prays that the Court will enter its Order providing counsel with copies of the transcribed testimony of the above-listed witnesses in this case, and tax the costs against Leon County, Florida.

Respectfully submitted,

MICHAEL M. CORIN
Assistant Public Defender
Second Judicial Circuit
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

(Certificate of Service omitted in printing)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324-CF

STATE OF FLORIDA,

v.

JOE ELTON NIXON,

Defendant.

MOTION TO PROVIDE COPIES OF DEPOSITION TRANSCRIPTS

The defendant moves this Court for its order directing that the herein listed Court Reporter provide counsel for the State and counsel for the defendant each with a copy of the transcript of testimony taken upon oral deposition of the following witnesses:

WITNESSES	COURT REPORTER	DATE
Wanda Jones Tom Igles Wanda Robinson Tony Revell Barbara Field John D. Nixon	Barbara Brobst for all depositions	2/14/85

As grounds for this motion counsel for the defendant would show as follows:

1. The defendant is charged with the offense of Murder, Kidnapping, Robbery and Arson.

2. The defendant has pled not guilty and the case is set for trial by jury on March 26, 1985.

3. Plea negotiations will apparently not resolve the case and trial by jury is probable.

4. The defendant is indigent and is unable to bear the costs of deposition transcripts. In accordance with the Constitutions of the State of Florida and of the United States of America, and pursuant to Florida Rules of Criminal Procedure, the defendant asserts that copies of the deposition transcripts are needed to insure that he receives due process of law, equal protection of the laws, a fair trial, effective assistance of counsel, and to adequately confront the witnesses against him at trial.

5. Copies of the deposition transcripts will be of significant assistance to both counsel for the defendant and counsel for the State in preparing for trial.

WHEREFORE, the defendant prays that the Court will enter its order providing counsel with copies of the transcribed testimony of the above-listed witnesses in this case, and tax the costs against Leon County, Florida.

Respectfully submitted,

MICHAEL M. CORIN
Assistant Public Defender
Second Judicial Circuit
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

(Certificate of Service omitted in printing)

EXECUTIVE DIRECTOR
JACK MAY, PH.D.

CLINICAL DIRECTOR
JAMES M. MENDELSON, PH.D

TALLAHASSEE
PAIN AND STRESS MANAGEMENT
INSTITUTE
1126 LEE AVENUE
TALLAHASSEE, FLORIDA
PHONE NUMBER (904) 222-5116

MEDICAL DIRECTOR
J. DAVID MOORE, M.D.

June 4, 1985

Mike Corin, Esquire
Assistant Public Defender
Second Judicial Circuit of Florida
Barnett Bank Building
P.O. Box 671
Tallahassee, FL 32302

RE: Joe Elton Nixon

Dear Mr. Corin:

As per your request, I have completed a psychological evaluation of your client, Joe Elton Nixon.

BACKGROUND: Mr. Nixon is a 23 year old single black male with 10 years of education. He is incarcerated at Leon County Jail on charges of first degree murder, kidnapping, robbery and arson. A lengthy Juvenile and Adult arrest record preceded the above charges: 7 Juvenile arrests including shoplifting, arson, burglary, breaking and entering and possession of stolen property; adult arrests for armed robbery, auto theft, dealing stolen property and shoplifting.

Elements of the social history include: Both parents alive and in good health, the client is the fourth born in a sibline of five males and three females. He attended Godby High School in Tallahassee up to the 10th grade. Avocational interests include amateur boxing. Mr. Nixon uses alcohol, cocaine and marijuana.

According to the client, medical history is essentially negative except for vague somatic complaints. He has had no major hospitalizations or surgeries. While incarcerated in 1982 he was struck in the head with a lead pipe and lost consciousness for a brief period of time. He was vague in regard to details surrounding this incident.

When asked to describe himself as a youngster he quipped, "I was a little gangster ... stayed in trouble ... I liked to take things." Growing up he felt closest to his brother John even though, "He got me into fights and stuff ... he had me fighting his battles." Joe had a difficult relationship with his father whom he described thusly, "He'd whip us when we did something wrong ... set down the rules ... made us go to church." Joe feels that his mother neglected him, "Didn't look after me as well as she did the rest of em ... always telling Daddy and getting me into trouble."

Mr. Nixon described a history of problematic relationships with the opposite sex. His first "girlfriend" was attracted to him based on his ability to steal things for her. Several subsequent relationships paralleled the first. His latest relationship with Wanda Robinson took a different dimension for Joe – he describes her in glowing terms and remains infatuated with her despite the fact that she apparently dropped Joe for his brother John. Difficult relationships with females (from mother on) appears to be a theme in Mr. Nixon's life.

PERTINENT INFORMATION REGARDING THIS CLIENT

According to the client, the days prior to the crime were marked by emotional turmoil, heavy alcohol use and the disintegration of his relationship with Wanda. Joe was aware enough of his chaotic frame of mind that on Thursday he called the police and asked them "to take me to jail." Wanda and Joe were constantly fighting, as she tried against Joe's will, to pull out of the relationship. On Friday evening they had a physical altercation in "Frenchtown" which required police intervention. As the weekend progressed Joe got less and less sleep and drank progressively more. Early Saturday morning he knew John and Wanda were together, "I was mad with the whole world ... I just didn't care." He went to Governors Square Mall.

> "I went to the Mall to walk around ... I pulled this lady ... I knew her ... from Sid's Lounge ... I told her go for a ride ... we rode off to the place where you get License ... I asked her for money ... she said I have to wait ... I banged her up and put her in the trunk. I drove by where Wanda was staying. I let her out of the trunk ... I said no money ... I don't need money ... I said I going to kill you."

Mr. Nixon then proceeded to tie up (with jumper cables), choke to death and attempt to burn Jeanette Bickner. He was arrested several days later at the apartment of Wanda Robinson.

BEHAVIORAL OBSERVATIONS

During formal examination Mr. Nixon was alert, oriented and cooperative. He appeared somewhat anxious and giggled inappropriately, especially during the first session. He is of average height and muscular build, no obvious physical defects were noted. His speech was articulate, though spontaneous, and direct. No bizarre or delusional material surfaced during the examination.

TEST ADMINISTERED

Weschler Adult Intelligence Scale (Revised), Seashore Rhythm Test, Speech Sounds Perception Test, Weschler Memory Scale (Russell Adaptation), Category Test, Cognitive Mental Status Exam, Bender Gestalt Test, Tactual Performance Test, Trail Making Test, Finger Oscillation Test, Small Pegs, Sensory Perceptual Exam, Minnesota Multiphasic Inventory, Rorschach Examination and the Early Recollection Projection Technique.

RESULTS

Note: Psychological Tests/Techniques employed in this evaluation are all of an acceptable validity and reliability (except as noted otherwise). However, using testing material for postdicting/predicting behavior is a matter of probability. (In other words, most of the statements made in the body of the report could be suffixed with "this is true 19 times out of 20").

COGNITIVE FUNCTIONING/NEUROPSYCHOLOGICAL STUDIES

Orientation: During all testing sessions, Mr. Nixon was entirely oriented and cooperative.

Intelligence: According to the WAIS-r, the client achieved a full scale IQ in the "Borderline range (Full Scale = 73, Verbal IQ = 74, Performance IQ = 72). There were considerable interest scatter in that on a measure of visual attention he performed in the low-average range whereas on a measure of verbal reasoning and comprehension, he was in the severely impaired range.

Memory: The first stage of memory processing is viewed as being able to pay attention. The Seashore Rhythm Test, a measure of auditory attention, revealed six errors which is in the marginal range. Similarly on Speech Sounds Perception again a measure of auditory attention he made nine errors, once again in

the marginal range. Memory functioning, as measured by the Weschler Memory Scale was clearly impaired on verbal immediate and delayed memory measures. Marginal scores were obtained on figural (nonverbal) indecises of memory functioning.

Reasoning: Mr. Nixon made 101 errors on the Category Test of the Halstead Reitan Battery, which is a measure of nonverbal reasoning. On this test he perseverated using ineffective strategies despite feedback that he was wrong. The cutoff for brain impaired functioning on this test is 50 or more errors.

Language: Overall language functioning seems to be an area of strength for Mr. Nixon in that on a brief language exam he made only one error of a pronunciation type.

Spatial: Mr. Nixon did not display constructional dyspraxia. His scores on the Tactual Performance Test using his dominant, nondominant and both hands were in the marginal range. During the memory and localization component of this task he could remember eight of the forms but placed none of them in their proper spatial relationship to one another. Such performance indicates some problem with the intermodality transfer of information.

Motor: On Trails A, a simple motor sequencing task he performed at the 30th percentile as compared to age peers. On Trails B, a more complex motor task involving sequencing and the simultaneous maintenance of two chains of operation he performed at the 14th percentile. Finger Oscillation was somewhat slower in his nondominant left hand than we normally expect (right = 50, left = 42).

Sensory: On a Sensory Perceptual Exam, he made no errors.

A summation of the above neuropsychological studies using the Halstead Reitan Impairment Index would index clear organic impairments. The Halstead Reitan Index equaled 1.0 (.5 or

above is considered brain impaired). Lateralizing and localizing signs were not robust. There were no signs of a progressive lesion.

These findings could be the result of several factors: genetic influences, prenatal influences, perinatal complications, numerous microscopic changes secondary to his boxing and mild close head injury after being struck in the head with a lead pipe.

The clinical implications of these findings are as follows: Joe Nixon is likely to experience some difficulty in problem solving in novel situations. His capacity with dealing actively, assertively and constructively with environmental changes is limited. His ability to comprehend, adjust to and deal effectively with new situations is probably compromised.

Personality Assessment: In unstructured, ambiguous situations (Rorschach Examination) Mr. Nixon demonstrated the capacity for adequate reality contact. He is able to see the world as it is not necessarily distorted by his own internal processes. However, when affective (emotional) stimulation is added his perceptual accuracy falls to the marginal range. In other words, in situations that are highly emotionally charged, his ability to accurately perceive what is going on declines significantly. In the balance between being internally stimulated and motivated versus being externally stimulated and motivated he demonstrated the capacity for an adequate influence from both spheres. In the interpersonal realm the faulty assessment of social realities and inaccurate analysis of interpersonal interactions was noted in that many of his human movement responses were spoiled. A weary, cautious anxiety ridden interest in human beings is manifested in his lack of whole human percepts. Loneliness, helplessness, and a painful alertness to expected danger is suggested in an analysis of determinates.

At no time during interview or testing did Mr. Nixon indicate that he was guided by "voices", or in any way responding to visual or auditory hallucinations. Some elements of magical thinking was noted in that he was concerned about Wanda working "roots" on him.

The MMPI configuration he endorsed was not overly defensive though there was some question as to validity. However, the clearest scale elevation on the MMPI has many items which overlap with the validity scale. In such situations the profile can be interpreted with caution. With that in mind, this profile is seen in individuals that manifest depression, emotional inappropriateness over ideation and fears or phobias are often present. These people spend much time in day dreams, are shy and anxious and keep others at a distance. They show difficulty in concentrating and their thinking is often autistic. The content of these patient's thoughts is almost always unusual and unconventional. Suspicion, distrust and grandiocity [sic] are often typical. Behaviorally, these patients are often unpredictable. These individuals are usually single. Most have inner conflicts about sexuality.

Thematic analysis of his early recollections indicated the following themes: 1. Revenge 2. Revenge 3. Revenge 4. Feeling rejected at home 5. Being afraid to leave the support and nurturance of a female.

On the Three Wishes projective technique which was administered immediately after discussing Jeanne Bickner, Mr. Nixon asked for (1) "Freedom" (2) "To be a boxer" and (3) "A son". At no point during the lengthy evaluation did he express remorse.

DISCUSSION/SUMMARY: The above psychological studies delineated as 23 year old black male who is currently functioning in the borderline range of intellectual abilities. Projective studies showed the capacity for poor reality testing when in emotionally

laden situations. The faulty perception of interpersonal relationships was manifest. Dealing with the complexities of interpersonal relationships is beyond Mr. Nixon, he is hampered by his borderline intellectual ability as well as some moderate degree of brain impairment. Impulse control is likely to be poor. Thematic analysis suggests that his primary mode of dealing with conflict is to immediately shift to a revenge mode and thoughts of retribution. His years of incarceration as a child and adolescence hampered normal maturation.

The situation with his brother John and lover Wanda was difficult for Joe to comprehend and organize. He was angry with Wanda, angry with John and wanted revenge. He was in love with Wanda, John was his brother. Limited intellect, poor reasoning (quite possibly secondary to brain impairment), lack of sleep, the effects of alcohol, emotional turmoil all acted to weaken Joe Elton Nixon's capacity for reason. It is possible that Jeanne Bickner was the focus of Joe's misdirected rage. Rather than venting his rage on John and Wanda, he focused it on Jeanne Bickner.

DIAGNOSTIC IMPRESSION

1. Borderline Intellectual Abilities
2. Mild diffuse cortical impairment.
3. Mixed personality disorder with elements of antisocial, borderline and narcissistic personalities.

Respectfully submitted,

Alan L. Doerman, Psy.D.
Associate

ALD/jrg

M.L. EKWALL, M.D., P.A.
1889-20 PROFESSIONAL PARK CIRCLE
TALLAHASSEE, FLORIDA 32308

NEUROPSYCHIATRY
ELECTROENCEPHALOGRAPHY

PHONE (904) 877-5064
BY APPOINTMENT ONLY

June 17, 1985

Michael M. Corin
Assistant Public Defender
Barnett Bank Building
P.O. Box 671
Tallahassee, FL 32302

Re: Joe Elton Nixon
a/k/a: Job Elton Nixon
a/k/a: "Jo-Jo" Elton Nixon
DOB: 08-23-61

Dear Mr. Corin:

In accordance with the Order of J. Lewis Hall, Jr. appointing me as a Defense Expert to examine the above named defendant in order to assist counsel for the defendant for the preparation of his defense, Mr. Nixon was examined in my office on March 28, 1985 and on April 11, 1985. A social history, psychiatric evaluation, mental status examination, Minnesota Multiphasic Personality Inventory, Sachs Sentence Completion Test, Electroencephalogram and a neurological examination were performed.

In addition the rather extensive reports of his juvenile behavior, his multiple stays at the Arthur G. Dozier School for Boys and his incarceration in the Florida State Prison as well as his periods of stay at the various boys camps and the Jack Eckerd camp were reviewed. As you are well aware this boy seemed to be perpetually in trouble while away from a structured environment. However, it should be noted that although he was "an angel in

the institutional setting"all evaluations, even from the age of 10, have caution [sic] that his disruptive behavior in the community would portend a bleak outlook and a poor prognosis for ever becoming a useful and productive citizen. The most recent antisocial events of August 11-12, 1984 certainly bear out that ominous prediction.

Because of the relatively good health that he has maintained throughout his lifetime the episode of being knocked unconscious in 1983 when struck with an iron pipe while incarcerated in Florida State Prison seemed important to evaluate and was the reason for the neurological and electroencephalographic examination.

On general physical examination he was found to 7'7 ½ " [sic] tall and weighed 164 lbs. Body type was of athletic build and muscular with spotty white patches appearing over portions of the body. No significant scars were noted although he reported three sutures taken in the right cheek area at the time he was rendered unconscious by the iron pipe. The cranial nerves were examined serially and found to be intact. The tonsils were moderately enlarged but not injected [sic]. Deep tendon reflexes were active and equal bilaterally and superficial reflexes were likewise active and equal bilaterally. No pathological reflexes were elicited. Coordination tests were well performed and sensory modalities were intact. In general the neurological examination was essentially within normal limits and showed no evidence of focal or disseminated neurological disease.

The electroencephalographic tracing was found to be well within limits of normal variations for this age group and no electrical evidence of focal cortical lesion, expanding lesion, or epileptiform activity were noted. Since history indicates that there has been no significant change in his physical abilities nor in his intellectual abilities and antisocial behavior it is my opinion that the iron pipe incident will not be found to have significant influence on the present situation.

As a younger boy, and prior to his present incarceration, it was frequently noted that drugs and alcohol were not significant factors. However, it is my information from the patient that in recent months he has used marijuana frequently, as well as free base cocaine and that alcohol has been used daily and frequently to excess and was very much a part of his state of mind in August of 1984. He tells me that using marijuana "give me a high – like I'm happy or in a dream world – out in the wilderness and alone in a cabin – like a wild horse." He further adds that when using marijuana "if I am in a crowd I try to talk to the most attractive girl in the crowd". When using alcohol, which he began at age 16, "I get in a few fights but I am the best dancer on the floor and if I drink wine or brandy I really have a good time". He has found that if he has a problem, and with nobody to talk to "I'd head for the liquor store and just sit by myself and drink and talk by myself". Tobacco usage has been limited to about 1 pack daily.

Mr. Nixon gave me a rather extensive description of his drug and alcohol intake and behavior on the 48 hours prior to the murder and up to the time of his arrest. I shall not detail this description in the letter but will go over this with you prior to the trial to see if there are any discrepancies with your information with the thought this information will provide some mitigation since it appears that Jeanne Bickner was not the primary target of his rage and revenge feelings he was experiencing at that time.

Because of the probability of a neuropsychological problem in this case I had Mr. Nixon examined by Dr. Allen L. Doerman. PsyD. and his report is in your hands. It is my opinion that his evaluation provides the frame work for describing the turmoil and rage Mr. Nixon was feeling at that time.

As a result of my examination it is my opinion that Mr. Nixon is sufficiently free of mental defect disease or derangement that he would be found competent to stand trial and be held responsible for his actions. He is technically capable of cooperating with his

attorney but because of his lifelong history of lying and creating fantasy situations and blaming others for his troubles it will be extremely difficult to get his full cooperation.

I think it would be helpful in the further progress of this case if you and I could plan to get together for an hour of face-to-face discussion regarding the multiple ramifications of this case.

Sincerely,

M.L. Ekwall, J.D.

MLE/ln

[Volume XI, Record on Appeal, Case No. 67,583]

[1851] MR. CORIN: Thank you, Your Honor.

Morning, ladies and gentlemen. I will stand back a little bit so I can make sure counsel and the Court and jurors can hear me.

[1852] In this case, there will be no question that Jeannie Bickner died a horrible, horrible death. Surely she did and that will be shown to you. In fact, that horrible tragedy will be proved to your satisfaction beyond any reasonable doubt.

In this case, there won't be any question, none whatsoever, that my client, Joe Elton Nixon, caused Jeannie Bickner's death. Likewise, that fact will be proved to your satisfaction beyond any reasonable doubt.

This case is about the death of Joe Elton Nixon and whether it should occur within the next few years by electrocution or maybe its natural expiration after a lifetime of confinement.

Now, you are going to sit as jurors performing the highest, the absolutely highest function of your lives in our society. There is no greater duty than to assist Judge Hall in resolving a life and death dispute between a citizen accused and his government. There is nothing more important in life than what you are about to do.

Now, you have taken an oath to decide this case as best you can, as best you can. All the yack yack over there over the last three days was geared towards Mr. Hankinson and Mr. Guarisco and myself trying to ascertain whether you would give each of us a fair trial, [1853] have an open mind. All we can ever ask is that you do the best you can and that you do the best you can at a proper time. As the Judge has told you, you don't

make up your mind, you don't discuss the case among yourselves or with anyone until the proper time. He will tell you that in his instructions.

Now, in arriving at your verdict, in your penalty recommendation, for we will get that far. you are going to learn many facts about this case, many facts about Joe Elton Nixon. Some of those facts are going to be good. That may not seem clear to you at this time. But, and sadly, most of the things you learn of Joe Elton Nixon are not going to be good. But, I'm suggesting to you that when you have seen all the testimony, heard all the testimony and the evidence that has been shown, there are going to be reasons why you should recommend that his life be spared.

Thank you.

[Volume IV, Record on Appeal, Case No. 67,583]

[641] MR. CORIN: Ladies and gentlemen of the jury, I wish I could stand before you and argue that what happened wasn't caused by Mr. Nixon, but we all know better. For several very obvious and apparent reasons, you have been and will continue to be involved in a very uniquely tragic case.

In just a little while Judge Hall will give you some verdict forms that have been prepared. He'll give you some instructions on how to deliberate this case. After you've gotten those forms and you've elected your foreperson and you've done what you must do, you will sign those forms. I know you are not going to take this duty lightly, and I know what you will decide will be unanimous.

I think that what you will decide is that the State of Florida, Mr. Hankinson and Mr. Guarisco, through them, has proved its case against Joe Elton Nixon. I think you will find that the State has proved beyond a reasonable doubt each and every element of the crimes charged; first-degree premeditated murder, kidnapping, robbery, and arson.

Once you have arrived at those verdicts, [642] there will by that decision be caused a second part of this trial. That's something that we had discussed with you earlier prior to taking your oaths as jurors.

At that time, you indicated that regardless of your own personal beliefs in the death penalty, you would listen to the evidence. You would listen to the Judge's instructions. You would weigh that evidence in arriving at an advisory recommendation of [sic] Judge Hall.

After today is over, we start the second part of this trial. The evidence and testimony that you've seen and heard will also

become part of your evidence that the State may introduce or I may introduce in Mr. Nixon's behalf.

After you have heard all that evidence, the testimony, Mr. Hankinson or Mr. Guarisco and myself will be able to present additional arguments to you, and Judge Hall will give you instructions to guide your deliberations.

It will be at that point as difficult as it may seem at this point. I will hope to be able to argue to you and give you reasons not that Mr. Nixon's life be spared one final and terminal [643] confinement forever, but that he not be sentenced to die. Thank you.

THE COURT: Mr. Hankinson for the prosecution.

MR. HANKINSON: Before I start into what I want to tell you about the case, I first want to thank you for being willing to come and sit on this case.

You know, jury duty is always a burden on people. It's especially a burden when we ask you to go and stay in a motel and stay away from your family and friends and so forth for a period of time. I appreciate the fact that you are willing to do that.

I appreciate that especially because – you know, I know it's hard for you to sit here and sort out what [sic] huffing and flattery by lawyers and what's sincere and from the heart, but I can tell you sincerely that I look at this group. I can be proud that we have 13 conscientious and intelligent people like you that were willing to take on this duty.

We all know that during jury selection at any point in time, really, you could have said something that could have gotten you off the jury. [644] We all realize that. So, it really

was on your part a conscious decision that you are going to accept your duty and sit on this jury.

I appreciate that. The State of Florida appreciates that. I know that you will conscientiously consider this case. I know that you are an intelligent group that will understand the facts, and I hope that you are the kind of group – and I do believe that you are - that has the mental toughness to do what's going to be called upon you to do.

I think that's really what it comes down to. I know that it is not pleasant to sit here and listen to the kind of testimony that you had to listen to. I know that we would prefer not to have to have these kinds of cases. We would prefer not to have to think about such things, but it is important.

We have to realize that there are people in this world like this Defendant that have to be dealt with, and we have to have a jury willing to sit here and listen to those facts and deal with it.

I noticed sometimes people wonder about and I [645] guess have different ideas on what makes a prosecutor tick. You probably wonder: Well, do Mr. Guarisco and I enjoy the fact that we're presenting this horrid thing to you. I assure you we don't.

Yet, at the same time, we have an obligation to make you feel just a little bit, just a little bit, of what Jeanne Bickner felt because, otherwise, sometimes I think it's easy to forget that. And the emotions involved in this case - and they are there. There are emotions going both ways in this case.

Hopefully, those emotions on the one hand where you are talking about imposing, well, the most serious penalties we have against a person which is an emotional thing are counterbalanced by the emotions of the terrible thing that's happened in this case. And then as a group of 12 people you can set this aside, set that

aside and you make an objective decision. You follow the law that the Judge gives you because that's what we need you to do.

As I come down to this part of the case, you know we're worried. Mr. Guarisco and I – we talked about well, what's the jury thinking. You [646] are a very poker-faced group. You don't let us know much about what we're [sic] thinking. Have we done something to offend someone? Have we done something to turn somebody off? Have we done something to confuse somebody or anything that we have done to interfere with your deliberations in the case? We do worry about that.

We try to think what are you thinking. Some of you may be sitting there thinking: Well, Mr. Corin just got up and said, well, you are going to have to go back into the jury room and find him guilty. Why doesn't the State just sit there and say: Fine, and let's go on and go back and do that.

That is a thought that crossed my mind. But you have to understand that we've lived with this case a long time. It isn't quite as simple enough for us to say well, we assume that the jury is going to do what Mr. Corin just said. So, we don't have to say anything. I hope you can accept I can't do that.

You have to think about why does Mr. Corin get up and make that kind of comment to you. What are the tactics that he's thinking of? The second thing is I want to make sure you are not confused [647] by this.

My wife was here during opening statements. Sometimes it helps to have some nonlegal person listening, and it kind of gives you a difference prospective. When I came home, she says: Well, I heard the opening statements. Why are you still having a trial based on what was said in opening statements by the Defense attorney?

I better address that because if it's something that confused her, maybe it's something that confused or worried you. You have to accept what the Judge has told you, what we've talked about that what a lawyer says is not evidence, nor does what a lawyer says in opening or closing argument have any legal affect at all. It's argument.

Obviously, it probably puts you in a somewhat different state of mind, but it does not relieve the State of Florida of its burden of proving its case to you and proving it to the Court, to the Court's legal satisfaction. So, we still have that burden.

Even aside from that, we're asking you as jurors to impose an ultimate penalty. I think that you are entitled and need to know all the facts of [648] that case before you are asked to do that so that you can understand what's going on.

And last, this testimony that's been presented to you and this argument that I'm going to make to you probably would have to be presented to you anyway in the penalty phase of this proceeding because most of the things that we're going to argue to you in the penalty phase – I'm not going to get to make that argument. So, this is really my last time I'm going to get a chance to talk to you – Mr. Guarisco is going to talk to you – are things that have already been proven to you. Aggravating circumstances that the judge is going to tell you about. There will probably be very little further testimony presented by the State.

So, this is the testimony that relates to the guilt and innocence phase, but is also relates to the aggravating circumstances that are going to be presented to you, explained to you by the Judge and going to be argued to you.

And last in those terms is I don't think a case can be over proven. Our burden is high. Probably, all we had to do in this case was put that tape in the Monday and play it for you. It [649]

probably would have been sufficient in this case, but we don't deal about probabilities.

We presented all the evidence to you, and I don't think we have to deal with probabilities any further. You've heard the facts. We want when you go back into that jury room, there to be no question in your mind. No question whatsoever that you have the Defendant in this case. This is a person that committed these crimes and that he should accept the punishment for it.

And the other reason that I believe that you need to think about the strategy of Mr. Corin is that I believe probably he's going trying to develop credibility with this jury so that when it comes down to the penalty phase, you would sit there and say: Well, in opening statement, Mr. Corin said that there will be no question that Jeanne Bickner died a horrible, horrible death. Surely, she did. That is what he said in opening statement which is certainly a true statement.

He went on the say in this case there will be no doubt, none whatsoever, that my client caused Jeanne Bickner's death. I think that he hopes that by going ahead and bringing out these things and tell you that these things are true that you are [650] going to accept necessarily when he comes in to the penalty phase and argues to you that you are necessarily going to accept what he argues to you.

I ask you not to necessarily fall in to that analysis. I want you to very carefully when we get to that point think about it. And again, if because of those tactics you've decided that you like Mr. Corin, remember, this isn't a contest of lawyers. It's a test of facts that are presented to you by the State.

You have to decide whether the facts have been presented to you, the legal standard been given to you by the Judge – whether those have been proven.

Let me talk about the law of this case a little bit. I'm not going nothing [sic] to great detail. Just a couple of things. First, in capital case such as this, a first-degree murder case such as this, the jury is given a copy of written instructions. The Judge is going to read them to you, and then he's going to give you a copy of them.

That scares lawyers sometimes. It scares us that somebody is going to take the instructions into the jury room and find an obscure phrase [651] somewhere in those instructions and attach great significance to it.

Now, these are the instructions that are going to be given to you, the written instructions that are to be provided by the Judge. I would ask you not to allow someone to become a legal scholar in the jury room to find some phrase buried somewhere to find that it has some tremendous significance.

Probably if it was not argued to you by the lawyers as having particular significance, it's probably because it didn't have a great deal of significance. But you will have a copy of the written instructions. If when the Judge reads them to you, if you can't follow them, you will have them.

But basically by and large when you boil it all down, the jury instructions presented to you tell you to use your common sense in arriving at a decision; that these are the elements that the State has to prove and you have to make your decision on.

Now, there is one thing in the instructions which I know is going to confuse you. It's called lesser-included offenses. We've been talking about [652] the first-degree murder. That's all we've talked about. We've been talking about kidnapping, robbery and arson.

Now, when you get the verdict form which the Judge will give you a written verdict form – they are written out – you are

going to find out that all of a sudden, there are a whole bunch of choices you have to make, a whole bunch of different alternatives. That's always confusing to a jury. I think probably one of the things that most confuses a jury.

These lesser offenses that we're talking about is simply building blacks [sic] of your most serious crime. In every case, the jury has to be instructed on the lesser-included offenses. That doesn't mean that there's any reason that you have to its [sic] consider them particularly or that that is a correct choice, but they are lesser-included offenses. They are the building blocks.

In other words, with the murder case, if you go backwards on your verdict form, the last instruction you read about would be manslaughter. The next most serious one is third-degree murder. Above that is second-degree murder. Above that is first-degree murder.

[653] Now, these are a part of the more serious charge, but the Judge is going to tell you that you should find the Defendant guilty of that crime, the highest crime, proven to you beyond a reasonable doubt.

And basically what this is is a chance for you to tell us what your theory on the case is and how the case was proven. There are two ways to prove first-degree murder. One is by proof of premeditation. That is, as the Judge will explain to you, a killing after a conscious decision to do that.

In this case, that premeditation has been shown to you in so many ways. The time involved in the case, taking Ms. Bickner and sticking her in the trunk, carrying her eight to ten miles, beating [654] her, tying her up, choking her, the method of death, the period of time involved in setting the fire, the fact that she begged him not to kill her. A conscious decision by the

Defendant in his statement that you heard today that he was going to kill her because she was a witness against him.

All of these are things, facts that you should consider in deciding that this Defendant did commit a premeditated first-degree murder, but there is another theory by which the case can be proven.

The second theory is that this murder was done during the course of certain enumerated felonies, which would be in this case, robbery and kidnapping. On that second choice, it does not require any proof of premeditation. Simply that the Defendant caused the death of Ms. Bickner and that it was during the course of a robbery or a kidnapping.

Now, I would submit to you that the proof in the case proves it both ways. One, that it has premeditated, that it was a premeditated murder. And two, that it was committed during the course of a felony of robbery or kidnapping.

If that is your decision as a juror, you [655] should check off on this special verdict form that we find that guilt was established by proof of premeditation and felony murder. If you find that it was only established by proof of premeditation, you should so indicate on this form or if you find that it was not proven that it was a premeditated death, but it was proven by proof of felony murder, you should prove it that way.

That would be what we call a special verdict. Basically, you are telling the Court what the theory is on your finding of first degree murder. This is for certain legal reasons down the road. I would ask you if you are convinced that it was premeditated and also during the course of commission, that you so state in your special verdict.

The other count I'll just talk about briefly is kidnapping, the second crime. Sometimes we think of kidnapping about what

we hear on TV where somebody is held for ransom. That's not the only way in the State of Florida by which a kidnapping is proven.

The three elements that must be proven to prove a kidnapping are that the Defendant forcibly, secretly or by threat confined or abducted Jeanne [656] Bickner; that it was against her will and that it was done to facilitate the offense of robbery or arson in this case.

There are two versions that you've heard about how the Defendant accomplished his kidnapping. One was the version that you heard in the tape that he gave to Major Camptell [sic] today was that after he had gotten out on Tram Road. At that point in time, he struck Ms. Bickner, took the wheel, put her in the trunk and then carried her out to the wooded area where he accomplished the murder.

The other version was when what he had told John Nixon and Wanda Robinson on the Monday prior to his arrest; that he had attacked her there at the mall, thrown her in the car at that time and then carried her out to the wooded area where the murder was completed.

I would submit that [sic] you that shouldn't cause you any problems; that either of those versions would fall under the kidnapping instruction that the Court would give you.

The third count, robbery, is simply a forceful taking, in this instance of the car, jewelry or money. I think the testimony you've [657] heard has been tremendous as to the robbery and I think all of us basically are aware of what robbery is.

The fourth is arson which in this instance is simply an allegation that the Defendant willfully damaged Ms. Bickner's car. I submit to you that the evidence is crystal clear that this, in fact, happened.

Now, I want to talk a little bit about the facts. I think this is important that we have clear in our mind what happened as much as we can. There are probably certain parts of it that we'll never know, but I think by and large we know exactly what happened.

The first way I'd like to do it is just to tell you a summary or a hypothesis of what the facts show happened. This would be in a more or less a chronology of what I submit the facts showed. Then go back and talk about how that's proven.

I submit to you that the story, if you want to call it a story, started on the morning of August 12, 1984, when Ms. Bickner rose and attended church, sang in the choir, made plans with her friends to go to the mall.

[658] She went to Morrison's with her friends. Afterwards, normal type activity, she decided to go shopping. After completing her shopping, I believe the evidence will show that somewhere around three o'clock, she left the mall. She walked out of Sears, the garden center and walked to her car.

At that point in time, a person unknown to her approached her and asked her to help jump off his car. Being the kind of person she was, she agreed to do that. She gave the jumper cables to this person, drove around to the end of the mall for the purposes of giving him a boost off to get his car started.

At that point, she was forced into the car either by actual force or by threats, driven to an area behind the Neal Kirkman Building, struck and stuffed in the trunk of her car. From that point, she was taken out to a wooded area, tied to a tree and beaten again.

At that point, she had conversation with this person in which she asked him to have mercy on her, not to kill her. She talked about being a Christian person and that if he would let her

go, she wouldn't report it. She would sign over the [659] title of the car.

The bag was placed over her head, the cloth bag. She was choked, tied to a tree with the jumper cables. That after being choked, a tunnel cover or canvas type roof from the car was thrown over her and she was burned alive. That's the end of Jeanne Bickner's story.

The Defendant's story goes on. The Defendant, Mr. Nixon, after killing Ms. Bickner, goes over to Pasco Street to show off his new car. He goes to Havana, riding around, having a big time. He shows off his car to his uncle, to his friend.

He shows off some rings. He told his uncle he was going to give them to his white girlfriend who he was going to marry. He returns to the mall and gets his Uncle Tom Igles' car and returns that to him.

On Monday morning he again returns to 910 Millard Street where he meets with Wanda Robinson and John Nixon. He's bragging, bragging about what he's done, trying to scare them, trying to be a big shot. He shows off his car and his rings and leaves. During the day, he's seen numerous places as far as Woodville driving around the count [sic] showing off this car.

[660] During the course of the day, he tried to sell the car to Mr. Turvaville. He pawns the rings to Mr. Council. And on Monday night goes back and spends the night with Willie James Harris and Evelyn Harris at their home.

Tuesday morning, the murder hits the news. It's in the newspaper. At that point, he takes Ms. Bickner's car and as he stated in his statement, he tries to destroy the evidence by burning it to try to remove the hand prints that he had placed on that.

He's arrested by Major Campbell and gives a statement which you heard today. When you go in to do your deliberations, I want you to think about it, think back to the statement. Think back to whether in that statement – and remember, this is two days after this murder – whether you heard some sign of remorse in there, some feeling of sorrow for the terrible thing he's done or whether you were just hearing the bland, matter-of-fact statement from somebody who has no concern whatsoever for human life.

Hopefully, the end of Joe Nixon's story will be with you. The proof that has been presented to you is overwhelming. I think that's indicative [661] of Mr. Corin's statements to you, but I want to review it just real briefly with you.

First, I don't want to – I'm not going to go through what each witness said. You heard the testimony. I know you are paying attention and you will recall it. I want to group these and just real quickly talk about it.

First, we know what happened at the mall from the testimony of Jeff and Mary Attebury; that they saw this Defendant about 3:00 p.m. with Ms. Bickner, obviously, I think from the description that they gave you, asking for a boost off. You know from their testimony that certain parts of what the Defendant told in his taped statement were not untruthful [sic] because you know they didn't walk out to the car together.

You know that the Defendant came across the line of cars, approached Ms. Bickner as she was walking up to her car. So, you know there are certain things that he's been untruthful about.

Then let's talk about the car. All of the various people that saw him in that car – eight different people, Greg and Susan Cleary on the day of the murder going to the area of the murder in her car. Afterwards over on Orange Avenue going in [662]

the direction of where Willie James and Evelyn Harris lived. Willie James Harris rides in the car with him on Sunday night and again sees him on Monday.

His own uncle James Nixon who has known him since he was a young boy. Evelyn Harris, his friend; Ernest Kilpatrick who sees him on Monday in the company of John Nixon and Wanda Robinson, and then John Nixon and Wanda Robinson. All of these people except the Clearys are people who know this Defendant well.

And on either Sunday or Monday, all of them saw him in Ms. Bickner's car. And then you have the testimony of Mr. Turvaville today, of him trying to sell the car on Monday. I believe the testimony was he started out at $200 and went down to $100 and eventually he was going to sell it to him for $50. It turned out he couldn't sell it because he didn't have the title to the car.

Then you have the testimony as to the rings. You have the various people that saw these rings which were identified by David Bickner as being Jeanne Bickner's rings. Willie James Harris, James Nixon, John Nixon, Wanda Robinson, all of which saw these rings in the possession of the Defendant.

[663] And then you have the testimony and they are in evidence before you about him pawning them. You had the testimony of Mr. Council who indicated to you that he saw a driver's license; that the driver's license matched with the picture of the person and that the person sold him those rings was the Defendant in this case Joe Nixon.

Then to go with that, we've put into evidence the driver's license so you can see that in early August, a short period of time before this offense, he had gotten a new driver's license with his picture on it.

And then let's talk about the expert testimony presented to you. You have Doug Barrow's testimony from the FDLE lab, a fingerprint expert who Mr. Corin stipulated to his credentials, that found six palm prints of this Defendant on Ms. Bickner's car.

You have the testimony of Karen Cooper that she matched the thread [sic] from the Sing Store which is where Willie James Harris told you that Mr. Nixon had had the flat with the rim and the tire that was in the trunk of the car after it was burned and that it matched.

And then you have the testimony of James [664] Outland who testified before you today that the Defendant did, in fact, sign the pawn ticket that has been placed into evidence.

And then last – and there's probably a whole lot more that I'm not going to talk about. In your deliberations, you might want to the [sic] talk about – you have the confessions that this is [sic] Defendant made both to the civilians and police officers.

To the civilians – and you need to think about who they were, too. To both his uncles, he admitted it. To Tom Igles, he admitted that he murdered the lady. He said he was mad at himself. James Nixon, who he admitted it to, his uncle. To his friend, Evelyn Harris, to his girlfriend Wanda Robinson, to his own brother John Nixon.

To all of these people, he admitted that he had done this despicable thing. And then you have the police to Captain Wise and Major Campbell. I hope that you were impressed as you heard the testimony today and as you heard it on the tape.

You don't have to accept necessarily just the credibility of the officer. The professional way in which this Defendant was treated despite the fact that you have to know that Major Campbell was [665] seething inside but tried to treat this

Defendant in a professional way and ensure that he understood his constitutional rights, knew what he was doing, treated courteously and not threatened or promised anything. And then he made those statements and you heard it today.

So, will I think as I said earlier, probably if this was the only thing that was presented to you, it would be ample proof of this case. And we didn't even talk about all the other matters of proof.

There are – we have a unique opportunity as lawyers. We live with a case for a long time. We get to know it pretty well. There are certainly things we want to make sure that you understand. To have a transcript of this statement.

I just want to go back and I want to highlight a few things that this Defendant said and things that Major Campbell was talking to him about. I hope you remember how the statement began.

Major Campbell says, "I don't want to try to put words in your mouth. It's your story. You tell us it. I don't know of any way to be any fairer than that." And then he proceeded to tell [666] it.

He was asked what happened, "I don't know the last name or nothing like that. I just killed her. I took her life and kept her car and tried to burn it this morning." "Did you know the lady at all?" No.

Then he was told by Major Campbell the lady's name. Later in the statement, he was asked how he happened to be talking to her. He said, "I had hurt my arm or something. She offered, you know, to take me home."

Later on in the testimony, when they're talking about how it happened, he said, "Then we headed out there. Then I hit

her, hit her in the head a few times. I told her that I was going out to Tram Road." "Who was driving? She was driving?" No, I told you I had done hit her.

"When did you hit her?" "When we got on the truck route, I grabbed the steering wheel." "Yes." "Where did you hit her?" "In the head." "With what?" "My fist." "What did she do?" "She hollered." "Hollered?" "Yes."

"So, what did you do when she hollered?" "Cut the car off." "Did she – did she bleed or [667] anything?" "Yes." "Where?" "In the head." "Whereabouts? Like, did her nose bleed or did her ear bleed or did her eye bleed?" "It was just blood all over her face." "Blood all over her face?" "Yes."

"Did she say anything other than holler?" "She told me don't kill her. And then I made her get out and put her in the trunk." "You put her in the trunk?" "Yes." "When you put her in the trunk was she still talking? Was she conscious?" "She was talking and she was just telling don't kill her. Yeah, and she would give me money and all that right there. If I would go to a phone booth and let her call, she'll call somebody to bring me some money."

"Then I asked her – I said I'm going to leave you here and keep you car." "What did she say about that?" "She said, 'I don't believe you are going to do that.'" "I said why. She said, 'Because you know I've seen your face and I can tell people.' I said, 'You know, something, you are right.' I said, 'You must want to die, you know.' And then I took her out.

"She was already out the trunk standing up with a bag over her head." "With a bag over her [668] head." "Yeah."

And then when you think about was the Defendant contained of all his faculties when this was going on, they had discussions: "You were trying to get out of there." "Just getting

rid of all that evidence and stuff." "So, you burned it up with the matches?" "Yes, I did."

"And then what did you do?" "Well, I just kind of sat there and talked to her." "What did you talk about?" "I told her about my life. She told me about hers. She was a Christian and all that."

"What else did she say?" "She told me that she wanted me to just leave her here and she'll sign her title over in my name, just keep the car. She don't want nothing like this to happen." "What else did she say?" "She begged, you know, just begging me and all right there." "All right."

"And then I took one of those black things, them old black things out the fire once it got heated up." "She was tied to the tree?" "Uh-huh." "And I just throwed it on her." "Whereabouts?" "On her head."

When you are thinking about whether this Defendant deserves any mercy from this jury, I want [669] you to think about Major Campbell asked him, "Why did you kill her instead of leaving her out there, Joe?" And you might remember in the tape at that point, he laughed. The Defendant laughed.

"She knows me. She knows. She knew my name and everything. You know, I did all those things and beat on her like that." "Thought she was going to tell on you." "Yes, because I had – you know, nine out of ten times, they are going to tell anyway, you know, if you take their car and all that right there."

So, he killed her because she knew him and could say who he was.

As I said, this is the last chance I'm going to get to talk to you. I want to just end with a few comments. In opening

statements, Mr. Corin said that this case is about the death of Joe Elton Nixon. I disagree with that.

As the Judge has already told you, you are here to judge a set of facts, not a person. A set of facts presented by the State. And the facts are about the death of Jeanne Bickner. I ask you to remember those facts today and later in the week when you deliberate in this case.

If at any time during your deliberations, you [670] begin to waiver based on appeals to sympathy or to your emotions, I want you to think back. And I want you to think back about how much mercy this Defendant showed to Jeanne Bickner. I want you to think back to what she felt.

I want you to think back to her begging for mercy and what the Defendant told her about that. And then after you've balanced that out, set aside those emotional things from one side or the other, then I want you to think real carefully about the instructions of law that the Judge gives you and the facts that have been presented to you. And then I want you to do your job. Thank you.

THE COURT: Mr. Corin to close.

MR. CORIN: May counsel approach the Bench.

(WHEREUPON, A BENCH CONFERENCE WAS HELD AND THE FOLLOWING PROCEEDINGS HAD.)

MR. CORIN: Judge, at this time, I would make a motion and ask for a mistrial based on a comment made by Mr. Hankinson at the commencement of his statement to the jury concerning about we should all feel like Jeanne Bickner.

And that's what I would believe to be a prohibitive Golden Rule argument. I think at this [671] time to instruct to

[sic] jury to disregard it would be to no avail. I would move for a mistrial

THE COURT: I don't recall any argument to that.

MR. CORIN: As I recall, the argument was that we should all feel what Jeanne Bickner felt or something to that effect which I construed to be a prohibited Golden Rule argument.

THE COURT: I thought his statement was: We should all remember what she felt, not that we should all feel that way. I did not hear it as a Golden Rule argument.

THE COURT: If that's any question, maybe the Court Reporter can read back those notes.

(WHEREUPON, THE REQUESTED PORTION WAS READ BY THE REPORTER.)

MR. CORIN: We have a obligation to make you feel a little bit of what she felt.

THE COURT: I'll deny the objection and deny the motion for mistrial. I don't think that's a Golden Rule argument. I think its close, but I don't think that's a pure Golden Rule argument.

(END OF BENCH CONFERENCE.)

MR. CORIN: Ladies and gentlemen, I just have a couple of things I want to say in response [672] to Mr. Hankinson's argument. He said a lot of things about me and how I've handled this case. I don't know so much as to whether it's tactics or it's truth.

Now, Judge Hall has told you on more than one occasion that what we're about here is a deliberative search for truth. In searching for truth, there's two parts to a first-degree murder trial. It's not just one part; it's two parts.

Now, if the tactic is that I admit the truth, then so be it. In our deliberative search for truth, as the Judge has told you and probably will tell you again, we all live by certain laws and certain rules of evidence.

Those rules preclude the Defense from bringing out certain things at the first part of this type of trial. They don't likewise preclude the State from introducing matters that are proper for your consideration now and will be proper for your consideration after you are instructed by Judge Hall during the latter part of this week.

Now, he mentioned my credibility, whether you know, Mr. Corin would blow his credibility and maybe I suppose If Mr. Corin got up and made some kind of cockamamy argument that this horrible thing [673] didn't occur, he wouldn't be credible.

I don't care what you think of my credibility. As a defense lawyer, I get plenty of that from everybody. How can you do that which you do. My credibility here is not the issue here and never will be. Never will be.

I don't care what you think of me. I don't care what you think of Mr. Hankinson. I don't care what you think about anything except the law as you are going to be given it by the Judge and how you are going to decide this case.

Now, I haven't been emotional. I'm probably going to get that way. I may get that way pretty quick. But we're here about emotions and we're here about life, and we're here about reality, and we can't hide from these things. We all have basic

human feelings, and those can never be hidden. I can't hide mine and you can't hide yours.

I don't expect that to happen, but I'm not going to try to blast you into deciding something that based on emotion, based on pleas that Joe Nixon is a nice guy. You will never hear that from me, folks. You will never hear that from me.

I'm going to try to give you some reasons, some reasons, why you should recommend life. And [674] if I don't, then don't. Don't. Because that's going to be your job. I just want you to do the best you can. That's all I'm ever going to ask of you and that's all I can ask on behalf of my client. You do the best you can.

There's a proper time when you are going to do that, but it the [sic] takes time. Everything is not before you. I know I've harped on it. I've harped on it and I've harped on it. It's not over until it's over, and it's not near over yet.

Now, I feel like I want to say some things about Mr. Nixon's statement, but I'm not going to say those things. You are going to have the tape. Now, Mr. Hankinson read portions of the tape. The tape in its entirety is not an easy thing for you to have to hear.

It's cold, but, you know, it's cold on both sides. You ought to listen to it. It's cold on both sides, but there are certain things on that tape which I think would lead you to believe that there are certain things that make Joe Nixon maybe not quite the obvious ogre that he is, at least what you might believe today.

I want you to do your job the best you can. That's all I'm ever going to ask you [sic] of you. Thank [675] you.

* * * * *

[687] Now to these charges the Defendant has entered a plea of not guilty. This means that you must presume or believe the Defendant is innocent. The presumption stays with the Defendant as to each material allegation in the indictment through each stage of the trial until it's been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the Defendant's presumption of innocence, the State has the burden of proving the following two elements beyond a reasonable doubt. First, the crime with which the Defendant is charged was committed. Second the Defendant is the person who committed the crime. The Defendant is not required the [sic] prove anything.

Whenever the words "reasonable doubt" are [688] used, you must consider the following. A reasonable doubt is not a possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt.

On the other hand, if after carefully considering, comparing and weighing all the evidence, or if having a conviction, it's one which is not stable but one which wavers and vascillates, then the charge is not prove [sic] beyond a reasonable doubt and you must find the Defendant not guilty because the doubt is reasonable.

It [sic] to the evidence introduced upon this trial and to it alone that you are to look for a proof. A reasonable doubt as to the guilt of Defendant may arise from the evidence, conflict in the evidence or the lack of evidence. If you have a reasonable doubt, you should find the Defendant not guilty. If you have no reasonable doubt, you should find the Defendant guilty.

It's up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best [689] evidence and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable or less reliable than other evidence.

You should consider how the witnesses acted as well as what they said. Some of the things you should consider are: Did the witness seem to have an opportunity to see and know the things about which the witness testified? Did the witness seem to have an accurate memory?

Was the witness honest and straightforward in answering the attorneys' questions? Did the witness have some interest in how the case should be decided? Does the witness' testimony agree with the other testimony and the other evidence in the case? You may rely upon your own conclusions about the witnesses.

A juror may believe or disbelieve all or any part of the evidence or testimony of any witness specified [sic] witnesses are like other witnesses with one exception. The law permits an expert witnesses [sic] to give his opinion. An expert's opinion, however, is only reliable when given on a subject about which you believe him to be an expert. Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

[690] A statement claimed to have been made by the Defendant outside of Court has been placed before you. Such a statement should always be considered with caution and weighed with great care to make certain it was freely and voluntarily made.

Therefore, you must determine from the evidence that the Defendant's alleged statement was knowingly and voluntarily and freely made. In making this determination, you should consider the total circumstances, including but not limited to:

One, whether when the Defendant made the statement, he had been threatened in order to get him to make it. Two, whether anyone had promised him anything in order to get him to make it. If you conclude the Defendant's out-of-Court statement was not freely and voluntarily made, you should disregard it.

Circumstantial evidence is legal evidence in a crime, and any fact to be proved may be proved by such evidence. A well-connected chain of circumstances is as conclusive in proving a crime or fact as is positive evidence. Its value is dependent upon its conclusive nature and tendencies.

Circumstantial evidence is governed by the [691] following rules: One, the circumstances themselves must be proved beyond a reasonable doubt. Two, the circumstances must be consistent with guilt and inconsistent with innocence. Third, the circumstances must be of such a conclusive nature and tendency that you are convinced beyond a reasonable doubt of the Defendant's guilt, the facts to be proved.

If the circumstances are susceptible of two reasonable constructions, one indicating guilt and the other innocence, you must accept that construction indicating innocence. Circumstances which standing alone are insufficient to prove or disprove any fact may be considered by you in weighing direct and positive evidence.

There are some general rules that apply to your discussion, and you must follow these rules in order to return a lawful verdict. First, you must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice.

There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in the matter. Secondly, the case must be decided only

upon the [692] evidence that you heard from the answers of the witnesses and seen in the form of exhibits in evidence and these instructions.

Third, this case must not be decided for or against anyone because you feel sorry or angry at anyone. Fourth, remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case. Fifth, your duty is to determine if the Defendant is guilty or not guilty in accord with law. My job as judge is to determine what a proper sentence would be if the Defendant is guilty.

Six, whatever verdict you render must be unanimous. That is, each juror must agree to the same verdict. Seven, it's entirely proper for a lawyer to talk to the witness about what testimony the witness would give if called to the courtroom. A witness must not be discredited for talking to a lawyer about testimony.

Feelings of prejudice, bias or sympathy are not legally reasonable doubts and should not be discussed by any of you in any way. Your verdict must be based on your views of the evidence and on the law contain [sic] in these instructions.

* * * * *

[Volume V, Record on Appeal, Case No. 67,583]

[752] MR. GUARISCO: Please the Court. Ladies and gentlemen of the jury, on behalf of the State of Florida, Mr. Hankinson and myself, I would like to thank you for your service and for your patience throughout this entire proceeding.

I know you've been back and forth, but there have been reasons for us to break like we have during this trial. I'd like to thank you also for your careful attention.

We've come to a very important part of this trial which involves a very difficult decision. It's not a pleasant task, but it's an important task for this community which you represent.

Even though at the beginning, Mr. Corin stated that there would be no doubt that the State would prove the case beyond and to the exclusion of every reasonable doubt, we had to go forth with the evidence because we were obligated to do so to [753] prove the elements of each and every crime to you and also to present evidence to you concerning factors that you would consider later in the penalty phase.

The evidence that you have heard in the guilt phase will be incorporated in to this penalty phase. The State of Florida will ask you to consider portions of that evidence concerning certain aggravating circumstances. Other evidence may be put on.

I want you to consider the evidence that you have already heard. Consider the other evidence that will be introduced. Consider carefully the arguments. The State of Florida at the end of this proceeding will come forth and will ask you to advise the Judge to impose the death penalty in this case based on the fact that a number of aggravating circumstances will have been proven. Thank you.

THE COURT: Mr. Corin for the Defense.

MR. CORIN: Good morning, ladies and gentlemen of the jury. As you know, this is my opportunity to discuss with you what I anticipate the evidence will show during this part of the trial. I would like to give you a little brief [754] outline.

Joe Elton Nixon is 23 years old. You didn't know his age, but you will find that out. Continuously since he was ten, he's been in trouble with the law. Properly, all these violations that he's had have caused him to be confined in various institutions: youth camps, halfway house, jails, prisons.

For example, I'm only talking about since he was an adult, not as a juvenile, but just simply since he's been an adult since 1980, he's been convicted of armed robbery, placed on 20 years probation. In 1981, he was sentenced to four years in prison based on a conviction in Quincy, Florida.

After his release from prison in July of 1983, he was charged with burglary of a dwelling. On that case, he was found guilty of an attempted burglary. He was on bail awaiting sentencing as an habitual offender on that case when he killed Jeanne Bickner.

Ultimately, he was sentenced to ten years in prison for that offense. While awaiting trial in this case, the one that you are sitting on, he's charged with and convicted of battery and assault [755] upon corrections officers at the Leon County Jail. For those offenses, he's been sentenced to a term of imprisonment for three years to run at the expiration of the ten-year sentence that I've just mentioned.

Since he's been confined in the Leon County Jail, the probation violation warrant has finally been lodged against his custody so that should he ever be available to be released from Florida's confinement, he would have to go back to Georgia.

As you will see – and sadly – his horrendous horrible actions were virtually predicted a long, long time ago, but I think what you will find maybe sadder or perhaps odder is that Mr. Nixon fell through some cracks in our system.

In August of 1984, Joe Nixon knew he was going to go back to prison for a long time. He was in love with a lady named Wanda Robinson whom you've heard testify. And you will hear her testify again. In fact, they had planned to get married, but for obvious reasons they didn't.

He had at that time some problems that apparently he couldn't nor could anybody else deal with. On August 8, 1984, four days prior to the death of Jeanne Bickner, Joe Elton Nixon called the [756] Leon County Sheriff's Department and said he wanted to speak to a deputy before he hurt someone. Two deputies responded to his call.

He requested that they take him to jail or somewhere, but quite rightly, since he had done nothing wrong, the deputies made sure that the situation that he was involved with at that time was under control, and they couldn't take him to jail. They left him at 910 Millard Street where he was staying with Wanda Robinson at the time.

During the early morning hours on Saturday, August 11, 1984, notwithstanding the fact that he was in love with Wanda Robinson, and in the presence of two police officers, he attacked Wanda Robinson at the intersection of Virginia and Macomb Street. He was arrested. He was charged with battery. He was given a notice to appear in Court and released from custody.

Late on Saturday, August 11th or some time perhaps during the early morning hours of Sunday, August 12, Joe Elton Nixon encountered Wanda Robinson and his brother John Nixon in the Frenchtown area. He was acting kind of crazy.

Apparently, through fear, Wanda and John did not return to Millard Street that night but spent [757] the evening in a motel in Chaires. On Sunday, when Wanda did return to her house, she found that Joe had left some notes at her house.

She thought that perhaps she had given those notes which were apparently a little strange to a law enforcement officer or that perhaps one of the [sic] Joe Elton Nixon's uncles, a man named LeMar, took the notes. I don't have the notes to show you. Apparently, they are simply not available.

Of course, we know that Sunday afternoon, Joe Elton Nixon kidnapped and robbed Jeanne Bickner. And two days later, he burned her car up. It's got to be obvious that Joe Elton Nixon is not normal organically, intellectually, emotionally or educationally or in any other way. He's not normal or right as we might commonly understand it.

I think from the documents and testimony that you will receive today and hear, that it's apparent that he's never been right. Now, of course, none of this serves to excuse or in any way justify the terrible thing that has happened, but hopefully this will give you, if you will, perhaps, a better picture of what is obviously a terrible or troubled or distorted individual.

I think that at the proper time based on that [758] information, there will be reasons why you should recommend to the Court that a life sentence be imposed. Thank you.

THE COURT: Who will you first witness be, Mr. Hankinson or Mr. Guarisco? Will you be handling the penalty phase?

MR. GUARISCO: No, sir, Mr. Hankinson will. I'd like to make an announcement for the record that at this time, the State of Florida would like to incorporate into the record of this

proceeding the testimony and evidence that was introduced during the guilt phase of this trial.

THE COURT: All right. The record will reflect that the prior evidence during the guilty/not guilty phase is hereby incorporated into the record appropriate for jury consideration in this phase. Mr. Hankinson.

MR. HANKINSON: Your Honor, at this time, we would offer to the Court two exhibits; the first exhibit which has been marked as State's Exhibit No. 1, Penalty Phase, is a judgment from Early County, Georgia, dated July 21, 1980, for the offense of armed robbery, one Joe Nixon.

The second exhibit that we would offer is a certified copy of a judgment from Leon County, [759] Florida, February 14, 1985, for battery and assault on a law enforcement officer.

Both of the judgments are certified copies of the judgment. We understand that the Defense is prepared to stipulate that these judgments were judgments that were rendered against the Defendant in this case, Joe Elton Nixon.

THE COURT: Correct, Mr. Corin?

MR. CORIN: Yes, Your Honor.

THE COURT: Let them this [sic] marked and received into evidence.

(WHEREUPON, STATE'S EXHIBITS NOS. 1 AND 2, PENALTY PHASE, WERE DULY MARKED AND ADMITTED INTO EVIDENCE.)

MR. HANKINSON: Next, the State would call Detective John Livings back to the stand.

* * * * *

Whereupon,

JOHN LIVINGS

was called as a witness, having been duly sworn, was examined and testified as follows:

THE COURT: Detective Livings was previously sworn and remains under oath.

DIRECT EXAMINATION

BY MR. HANKINSON:

[760]Q For the record, will you state your name, please, sir.

A John Livings.

Q And, I believe, you're previously indicated that you are a detective with the Sheriff's Department?

A That is correct.

Q And were the lead investigator in this case?

A Yes, sir, that's correct.

Q On the evening of August 14, 1984, did you have some discussions with the Defendant in this case, Joe Nixon?

A Yes, I did.

Q And where did these discussions take place?

A At the Leon County Jail in the booking room.

Q And approximately what time did these discussions take place?

A Between approximately 7:56 p.m. and 9:33 p.m.

Q And why were you there at the jail to meet with him?

A I was there to finalize all the paperwork and advise him of all the charges that he was being charged with, answer any question that he may have about what he was being charged with.

Q Now, prior to talking to him, did you advise him of anything?

[761]A Yes, sir, I told Mr. Nixon that he realized that he still had the right to remain silent; that he did not have to talk with me if he did not want to.

Q Did you repeat a full set of Miranda warnings that we've heard earlier from Major Campbell?

A No, sir, I did not.

Q Did he indicate he was willing to talk to you?

A Yes, it is.

Q Would you please relate to the jury basically the conversation that you had.

A I asked Mr. Nixon that something had been puzzling me and that I figured he could probably answer the question for me. I asked him what had happened to Ms.

Bickner's underwear. He stated that he had taken them off of her. I said, "Well, why did you take them off of her? What happened to them?"

He stated that he had burned them up. I said, "Why did you take her underwear off of her, Joe?" He said basically that he just wanted to scare her. He wanted to terrorize her a little bit more.

Q Now, Detective Livings, did you employ any kind of trick or subterfuge to get him to make these statements?

A No, sir.

[762]Q Did he know that you were a police officer involved in investigating this case?

A Yes, sir, he did.

Q Now, the information that you just related to us – did you put that in your police report?

A No, sir, I did not.

Q Why not?

A Just an oversight on my part.

MR. HANKINSON: Those are all the questions I have at this time.

MR. CORIN: No cross.

THE COURT: You may step down.

MR. HANKINSON: Your Honor, that's the testimony the State intends to produce in reference to the penalty phase.

THE COURT: Will counsel approach the Bench with the Court Reporter, please.

(WHEREUPON, A BENCH CONFERENCE WAS HELD AND THE FOLLOWING PROCEEDINGS HAD.)

THE COURT: Detective Livings' testimony was proffered previously to the Court. Defense counsel objected at that time. Out of an abundance of caution and in view of Florida's contemporaneous objection rule, I assume that counsel did not formally proffer that objection again in the [763] presence of the jury because the objection previously been made and the Court was aware of the nature of the objection. To have done so was futile. If you wish to now at the Bench Conference out of the presence of the jury note that for the record, you may do so.

MR. CORIN: Yes, sir, I obviously didn't wish to bring any further attention to the testimony in front of the jury. And since the Court had immediately – the first testimony today being Detective Livings – overruled my objection, I am of the opinion the Court wouldn't change its mind in that regard. Of course, as the Court notes, I didn't mean to abandon it or in any way to back off from my previously [sic] argument.

THE COURT: No, I just wanted the record abundantly clear that there had been no abandonment and also to make it clear that to have objected at that point would have been futile and no useful purpose would have been made. The Court now reaffirms its ruling.

Who would be your first witness?

MR. CORIN: I think I'll call Betty Nixon. She's not well. So, if I can get her first.

THE COURT: So, you are prepared to proceed [764] at this point?

MR. CORIN: Yes, sir, what we can do is put on Ms. Nixon and the doctors. I've told my doctors to be back at one.

(END OF BENCH CONFERENCE.)

THE COURT: Mr. Corin.

MR. CORIN: If I might, I'd like to call Betty Nixon, please.

THE COURT: Ms. Nixon has not been sworn.

* * * * *

Whereupon,

BETTY NIXON

was called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORIN:

Q Ma'am, would you state your name, please.

A Betty Nixon.

Q And where do you live?

A 1700 Joe Louis Street.

Q And are you related to Joe Elton Nixon?

A I'm his mother.

MR. CORIN: Your Honor, if I might, since Mr. Nixon is not here just for formalities approach Ms. Nixon with a picture. I'd like to show her [765] State's Exhibit No. 17 and ask her if that's her son.

BY MR. CORIN:

Q Is that your son?

A Yes.

Q Ms. Nixon, how many children are there in your family?

A Eight.

Q Eight. And is Joe the oldest?

A No.

Q How many boys and how many girls do you have?

A Five boys and three girls.

Q And where is he in that number of children?

A He's the fourth.

Q Ms. Nixon, has Joe had a lot or problems with the law?

A Yes, he has.

Q When did you first notice that he had some problems?

A When he was about nine, between nine and ten years old.

Q Did he have problems in school?

A Yes, he did.

Q Because of the problems in school, was he in trouble with the law because of those problems, also?

[766]A Mostly, yes.

Q You and Joseph's father – do you live together?

A No, we don't.

Q You are separated?

A Yes.

Q At this time?

A Yes.

Q When Joe was coming up, what did you think of him as a child?

A What did I think of him?

Q Yes.

A Well, as a child, I guess, you know, I loved him. He was having a lot of problems in school. He was in and out,

you know, with the law, but I thought that he needed some kind of help because he didn't seem to be normal.

Q He didn't seem to be normal?

A No.

Q Did he have emotional problems or like mental problems or –

A Emotionally, mentally, you know. He had them.

Q When he was a youngster, did you take him to church?

[767]A Yes, we did. He was raised up in church.

Q And did you try to provide for him as best you could?

A Yes, we did.

Q Has Joe over the years been helpful to you?

A Yes, he has.

Q Have there been times when he's tried to do the things that you would expect?

A Yes, he has.

Q But there's been many times when he hasn't?

A That's right.

Q Ms. Nixon, did you want to come here today?

A Not really, but I am here. I don't mind.

Q You tried you best to raise him right, didn't you?

A I did.

MR. CORIN: Thank you. No further questions.

MR. HANKINSON: We have no questions, Your Honor.

THE COURT: You may step down. Call your next witness.

MR. CORIN: Your Honor, I'd like to call Wanda Robinson, please. She's been previously sworn, Your Honor.

[768]* * * * *

Whereupon,

WANDA ROBINSON

was called as a witness, having been duly sworn, was examined and testified as follows:

THE COURT: The witness was previously sworn. She remains under oath. Have a seat.

DIRECT EXAMINATION

BY MR. CORIN:

Q Ms. Robinson, once again, would you state your name and address, please.

A Wanda Robinson, 2502 Holton Street.

Q I think you have probably already identified Joe Elton Nixon. You do know Joe Elton Nixon, don't you?

A Yes.

MR. CORIN: If I may, Your Honor, show her State's Exhibit No. 17 again.

THE COURT: Yes, sir.

BY MR. CORIN:

Q Is that Joe Elton Nixon?

A Yes.

Q Ms. Robinson, when did you meet Mr. Nixon?

A It was right after he got out of prison. I would say about two years.

[769]Q In the summer of 1983?

A Yes.

Q Do you recall how you first met him?

A I think he came over to my house with his uncle.

Q And at that time when you first me Joe Elton Nixon, were you girlfriend/boyfriend with John Daniel Nixon?

A Oh, for some time, yes.

Q You had been with him at times?

A Yes.

Q Did you sort of break up with John in order to start going with Joe?

A No, me and John just couldn't get along.

Q And you started seeing Joe regularly when?

A Well, it was after he got out of jail. It was after he got out in December or January.

Q So, last year.

THE COURT: I'm going to ask the witness if she would speak up a little. I don't think the jury is hearing you clearly.

Q In the period of time just before Joe's arrest for murder, was he staying with you at 910 Millard Street?

A Yes, he was.

[770]Q Do you recall the week prior to his arrest? Did there come a time when Joe called the Sheriff's Department?

A Yes.

Q And there had been some problems, is that right?

A Yes.

Q And did officers come out to the house?

A Yes, they did.

Q They didn't take him at his word, did they?

A No.

Q That was the week before his arrest?

A Yes.

Q Now, on that same week, relate Friday night or early Saturday. Did Joe go after you, so to speak?

A Yes, he did.

Q Would you tell us about that, where you were and what happened.

A Well, he had told me he didn't want me to go to Frenchtown with my sister. I went anyway. He came down there and tried to jump on me.

Q And he hurt you or did he touch you?

A No, he tried. He just tore my shirt.

Q Were there police?

A Yes, there were two police officers standing [771] beside me.

Q Were there some other family and friends and people there, also?

A Yes.

Q Was Joe arrested at that time?

A Yes, they took him to the police headquarters.

Q And did you seem him again after that time?

A Yes, I did. He called twice from the police department. And then he came over where I was.

Q And then did you seem him then that same Saturday but later on?

A Yes.

Q Where was that?

A In Frenchtown.

Q And who were you with at the time?

A I was with John.

Q And can you describe how Joe acted, how he appeared?

A Well, he wasn't himself.

Q He wasn't himself?

A No, he was wild. He was looking wild, hiding behind buildings and stuff.

Q And did you have any discussions with him at that time?

[772]A Yes, John and I both. We talked to him about 30 minutes to an hour.

Q And then did you go your separate ways or did you go off together?

A We went our separate ways.

Q And where did you go?

A We went out in Chaires.

Q Whom did you go with?

A John.

Q And why did you do that?

A Because he told me that he knew his brother better than I did and that something was wrong with him, and he might hurt me.

Q And you were in love with Joe, but were you frightened at all?

A Yes.

Q Because of the way he had acted?

A Right.

Q Now, that was late Saturday night or early Sunday morning. After you spent the night in Chaires, do you recall about what time you might have gone back to your home at 910 Millard Street?

A It was after three o'clock that Sunday afternoon.

Q That would be the Sunday just before Joe's [773] arrest?

A Yes.

Q When you got back to the house, what did you find?

A Joe had left a lot of notes there. He had left about three or four notes there.

Q Do you recall what was in any of those notes?

A Yes, one of them said that he loved me and he was going to get something to eat. He would be right back. And then another one said if I wanted John, I better not come back to my house.

Q If you wanted John, you better not come home.

A Yes.

Q Who was with you when you found those notes?

A John and LeMar Nixon.

Q And do you have any idea whatever happened to those notes?

A No, sir, because LeMar had picked up two of them. I don't know what happened to them.

Q Did you think at one time you might have given them to some police officers?

A That's what I intended to do, but I couldn't find them when I went back to look for them.

Q Could you tell if in that time period, Friday and Saturday, whether Joe had been drinking or using [774] anything like marijuana or anything like that?

A He was drinking Friday night, you know, that Friday night, but I don't know about Saturday or Sunday.

Q You didn't see him early Sunday, did you?

A No, sir.

Q As I recall from your testimony earlier, the next time you saw him after Saturday, early Sunday morning, was on a Monday morning?

A Yes, 5:00 that morning.

Q And it was the next day he was arrested?

A Yes.

Q To your knowledge, was Joe aware that he was going back to prison last summer?

A Yes, he was.

Q And do you know he knew that he was going away for a long time?

A Yes.

Q And do you recall how many years he was probably going to be get [sic] sentenced to?

A Ten.

Q And is that based on discussions that you and he had with me about his case?

A Yes.

Q And that was prior to the time of his arrest for murder?

[775]A Yes, it was.

Q Ms. Robinson, do you have any children?

A Yes, three.

Q Are they by Joe or some other person?

A No, no Nixon kids.

Q So your children – did they spend some time with Joe?

A Yes, they were real fond of Joe.

Q While he lived with you and stayed with you, did he try helping you with your children?

A Yes, he took up a lot of time with the kids.

Q Did the kids like it?

A Yes, still do.

Q You still love Joe?

A Yes.

MR. CORIN: Thank you. No further questions.

CROSS EXAMINATION

BY MR .HANKINSON:

Q Just a couple of questions, Ms. Robinson. The incident Friday night that you talked about – you were trying to get Mr. Nixon mad at you weren't you.

A No.

[776]Q Weren't you trying to tease him in front of the police officers trying to get him mad with you?

A No, I was not.

Q You weren't trying to get him in trouble?

A No.

Q Now, was Joe Nixon jealous of John Nixon because of you?

A No, they told me they always had that jealousy thing between the two of them.

Q It wasn't because of you?

A No.

MR. HANKINSON: Thank you.

THE COURT: Anything further, Mr. Corin?

MR. CORIN: No, Your Honor.

THE COURT: You may step down. Call your next witness.

MR. CORIN: Your Honor, I'd like to call Brian Henry, please.

* * * * *

Whereupon,

BRIAN HENRY

was called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORIN:

[777]Q Would you state your name, please.

A Brian Henry.

Q And your occupation?

A I'm a communications supervisor with the Sheriff's Department.

Q And were you so employed on Wednesday, August 1, 1984?

A Yes.

Q And where [sic] you working during the evening hours that day?

A Yes.

Q And do you recall receiving a call from a black male that identified himself as Joe Nixon?

A Yes.

Q And you received that call in the normal course of your duties?

A Yes.

Q Can you recollect approximately what time it might have been.

A The white card states about 9:30. I don't remember right off the bat, but I think it was around 9:30 or 10:00 that evening.

Q Did you fill out a complaint card?

A Yes, sir.

Q And did you bring that card with you today?

[778]A Yes.

MR. CORIN: Your Honor, if I could, I would like to move to introduce the card. I think since it's normally kept in the course of business in the Sheriff's Department. I would like to introduce at this point, given my pre-existing numbering, as Defense Exhibit No. 50 and then ask perhaps if the Clerk might could make a copy of it and then return to Mr. Henry so that he might maintain it in his files.

THE COURT: Is the document ordinarily kept in the course of business conducted in the Sheriff's Office

MR. CORIN: Yes, Your Honor.

THE COURT: Routinely?

MR. CORIN: Yes.

THE COURT: Is there objection?

MR. HANKINSON: No.

THE COURT: I'll go ahead and admit it into evidence and authorize the Clerk's Office to make a copy of the document and to be inserted in lieu of the original; the original be returned to the officer and to the Sheriff's Office.

MR. CORIN: Your Honor, while I have the officer on the stand, I would ask that the officer [779] read the informational portion of the card for the jury.

A The card states: Signal 22 which is a disturbance. The complainant said he wants to talk to a deputy before he hurts someone. The complainant will meet the deputy out front of his house. Respond to 910 Millard Road, a brick house. On the complainant line, it says Joe Nixon, a black male.

MR. CORIN: Your Honor, I have no further questions.

MR. HANKINSON: I have no questions.

THE COURT: Mr. Clerk, secure the evidence and make a copy of it. It will be returned to the Sheriff's Office after the copy is made. You may step down. Mr. Corin.

MR. CORIN: Yes, Your Honor. If I could, call Deputy James Clifton.

* * * * *

Whereupon,

JAMES CLIFTON

was called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORIN:

Q Would you state your name and occupation.

[780]A James Clifton, deputy sheriff.

Q And how long have you been so employed?

A I've been employed here for just over two years, sir.

Q Well, you were employed there [sic], but were you in the normal performance of your duties as a deputy on August 8, 1984?

A Yes, sir.

Q And during the evening hours, were you dispatched to 910 Millard Street?

A Yes, I was.

Q And do you recall about what time you got there?

A It was approximately 10:29, I believe it was. 10:26.

Q Were there other officers with you at that time?

A I was riding by myself that night, sir. Deputy Bevis was already at the scene when I got there.

Q And did you meet up with a black male?

A Yes, sir.

Q And did that black male give you a name? Did you know whom you needed to talk to?

A When I got there, Bevis had already been there for a while. I pulled in there beside him, asking [781] him what he had. He informed me then that Mr. Nixon – the lady there had had a problem.

Q Let me, if I could, show you State's Exhibit No. 17. Is that the man you spoke with that night, or can you tell?

A Yes, sir, I believe that's him.

Q How long were you there that night at 910 Millard Street?

A About ten minutes, something like that, sir.

Q Did Mr. Nixon request that you take him to jail?

A Not to me directly. At the time I pulled up, he was sitting at the curb there talking with Deputy Bevis. I heard part of the conversations which he said: Take me to jail.

Q You overheard that?

A Yes, sir.

Q But he hadn't done anything wrong?

A No, sir.

Q Did you discuss anything with a woman named Wanda Robinson or a black woman? Maybe you didn't get a name.

A Yes, sir. I talked with her briefly again just to make sure that she was all right. Tried to find out something of what the problem was there.

[782]Q And in your professional judgment, there was nothing untoward happening?

A No, sir, not at that time.

Q And you left?

A Yes, sir.

MR. CORIN: Thank you very much.

THE COURT: Mr. Hankinson.

CROSS EXAMINATION

BY MR. HANKINSON:

Q I just wanted to clear one thing. The bulk of the dealings with Mr. Nixon was by Deputy Bevis?

A Yes, sir.

MR. HANKINSON: Thank you.

MR. CORIN: Your Honor, I'd like to call Deputy Greg Bevis.

* * * * *

Whereupon,

GREG BEVIS

was called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORIN:

Q Would you state your name and occupation, please.

A Greg Bevis, deputy sheriff.

[783]Q How long have you been with the Sheriff's Department?

A Four years.

Q On August 8, 1984, do you recall what hours you were working that day?

A From three in the afternoon until eleven at night.

Q And in the normal course of your duties, were you asked to go to 910 Millard Street?

A Yes, sir.

Q And what information did you have before you got there?

A I proceeded to a call reference to a disturbance between a girlfriend and boyfriend at that address.

Q When you got there, were you alone? In your car alone?

A Yes.

Q Let me show you State's Exhibit No. 17 and ask you, if you would, can you identify this person.

A Mr. Joe Nixon.

Q Is that the gentleman that you saw there on August 8, 1984?

A Yes.

Q Tell us about what happened when you got [784] there.

A I arrived at that address. Mr. Nixon was sitting on the curb on the side of the road on Millard Street. I asked him if he called the Sheriff's Office. He said he did. I introduced myself. I asked him if I could help him.

He stated that he wanted to go to the county jail. I asked him why. Did he break the law and commit a crime. He said no. I said, "I can't very well take you unless you break the law. Tell me what's going on." He said, "Me and my girlfriend are having a little disagreement. I want to leave."

I saw no problem with there [sic]. I'll see that you leave. If you want to leave, I'll give you a ride. At that point, I don't remember. I'm sure I said something else to him. I don't know what. I told him I was going to speak with her.

So I went across the street and went down in the front yard. She was walking out of the house. I told her, "I understand you and Mr. Nixon are having a little disagreement. He wants to leave. Do you have any problems with that?" She said no. I said, "Well, will you take him uptown or wherever he wants to go?" She said, "I'll give him a ride." I said fine.

So I went back and spoke with Mr. Nixon. I [785] said, "She'd be glad to give you a ride. You need to separate for a few days. Maybe when things cool off, call on the phone and you can work things out over the phone." He said fine. And then I left.

MR. CORIN: Thank you.

THE COURT: Mr. Hankinson. Cross examination.

CROSS EXAMINATION

BY MR. HANKINSON:

Q So, basically, what it boiled down to is he wanted a ride away from there?

A Yes.

Q And you arranged a ride for him?

A Yes.

Q And he indicated that was fine with him?

A Yes.

Q Did he ever say anything about hurting anyone?

A No, sir.

Q Did you note any signs of extreme emotional distress?

A Not that I could tell, no, sir.

Q And, so, basically, it wasn't any big deal there when you got there?

A They both were separated. Things were calmed [786] down.

Q He was relatively calm when you talked to him, not particularly upset or angry?

A Exactly.

Q And that was the end of your contact with him?

A That day?

A Yes.

MR. HANKINSON: Thank you.

MR. CORIN: No further questions.

THE COURT: You may step down.

MR. CORIN: Your Honor, maybe just one more witness. It would be Officer Eldridge.

* * * * *

Whereupon,

W.M. ELDRIDGE

was called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORIN:

Q Officer, would you state your name and occupation?

A W.M. Eldridge.

Q And your occupation?

A Police officer.

[787]Q City of Tallahassee?

A Yes.

Q How long have you been so employed?

A Thirteen years.

Q And were you working as a police officer on August 11, 1984?

A Yes, sir.

Q Did you have occasion on that date to arrest Joe Elton Nixon?

A Yes, I did.

Q And if I might, I'd like to show the officers State's Exhibit No. 17 and ask if you could identify this individual?

A (Examining photograph.) Mr. Joe Nixon.

Q This is the man you arrested then on August 11th?

A Yes.

Q 1984. Were you by yourself at the time of the arrest?

A No, sir, I was accompanied by Officer Riley.

Q And for what offense was Mr. Nixon arrested?

A Battery.

Q And who was the alleged victim of that offense?

A Wanda Robinson, who is his girlfriend.

[786]Q Do you recall the time?

A The time of the arrest?

A Yes, sir, it was 12:45.

Q You are refreshing your recollection from the report then?

A Yes, I am.

Q And this occurred where?

A It was the corner of Virginia and Macomb Street there at the old Tropicana poolroom.

Q And what did you observe that caused you to arrest Mr. Nixon?

A We were on walking assignment that night. We were standing at the corner watching people. Joe Nixon and Ms. Robinson were on the corner. She didn't want to leave. He

wanted her to leave. She didn't want to. They got to arguing. She threw down a beer can, I remember, and walked around us.

We were standing at the utility pole there, and she came around us. When she did, she increased her pace. I knew then she was fixing to run from him for some reason for [sic] another. So, he reached out and tried to grab her. I grabbed him and he did grab her. Officer Riley grabbed him. We had to pull him away from her. I think he hit her once or twice and knocked her down.

[789] As soon as we got him separated from her, we were assisted by two other men who were there in the crowd and we got him off of her. He calmed right down. We arrested him and called the car down there. And they transported him, and we went to the station. He was calm. When we got to the station, he met the criteria to be released on his own recognizance. So, we had him sign a notice to appear. He went and he left.

MR. CORIN: Thank you very much.

CROSS EXAMINATION

BY MR. HANKINSON:

Q So, the incident we're talking about – would this be shortly after midnight which would be late Friday night/early Saturday morning depending on how you look at it?

A Yes.

Q Before Ms. Robinson came over to you, did she see you there, the police officers there?

A Yes, I think she did. She was approximately, at the most, seven or eight feet away from us when they were talking.

Q And you were in uniform?

A Yes.

Q And did it appear that she was trying to tease him or taunt him to get him to come after her?

[790]A I wasn't under that impression at first. I think that she just didn't want to go. I knew she was not afraid of him. At one point, she acted like she was mad. I was kind of listening to the conversation anyway. Any time anybody is kind of having an argument, you realize that it can escalate and get verbal and get out of the [sic] hand especially in that area down there.

When she threw the beer can, that's when I started paying attention it may be escalating. It did.

Q Was this incident that you observed – was that an uncommon incident for the area where you were there by the Tropicana?

A No, sir, it wasn't.

Q Now, were any real serious blows struck? I mean, was Wanda Robinson injured to any extent or anything?

A No, she said she wasn't. Of course, I don't know. We were holding on to him. He may have hit her again.

Q Now, I believe you indicated as soon as you had separated the two of them, that the Defendant had calmed down?

A Yes, sir, calmed right down.

Q And about how long were you with him?

A About an hour maybe.

[791]Q And during that period of time, was he calm?

A Yes.

Q And rational?

A Yes.

Q And what did he say to you?

A He told me he gotten mad. She really made him mad. He was all right. He understood that everything was over.

Q Did he apologize to you?

A He did to me, yes, sir.

Q Did he appear to be under the influence of any extreme mental or emotional disturbance?

A No, sir.

Q While he was with you, did he make any phone calls?

A Yes, sir.

Q And whom did he call?

A He called Ms. Robinson.

Q The lady that you testified that he hit?

A Yes.

Q And could you hear his end of the conversation?

A Just part of it. I was under the impression – I don't remember exactly what he said, but I was under the impression that he was trying to make up [792] to her.

Q It wasn't an angry conversation?

A No, it was very low key.

Q And basically, it sounded like they were working out whatever problems they had?

A Yes.

Q And did you release him that night?

A Yes, I did.

Q Whom did you release him to?

A The man was his uncle. He identified himself as an uncle. He also helped us – he was in the car, and he was trying to get Ms. Robinson to leave him.

Q So you released him to his uncle?

A Yes, he said he was.

Q And that was after you had been with him about an hour?

A Yes.

Q When you released him, was the Defendant calm?

A Yes, sir.

Q Rational?

A Yes.

Q See any signs of, you know, that he was extremely upset about anything?

A No, sir.

[793]MR. HANKINSON: That's all the questions I have.

THE COURT: Redirect.

MR. CORIN: No, sir, I just need to retrieve my copy of the report from the officer. Thank you, Your Honor. Could counsel approach the Bench with the Court reporter.

(WHEREUPON, A BENCH CONFERENCE WAS HELD AND THE FOLLOWING PROCEEDINGS HAD.)

MR. CORIN: The doctors are the only witnesses I have left. I told them both to come back about one.

THE COURT: How many of them do you have?

MR. CORIN: Just two. Dr. Dorman and Dr. Ekwall. What I'd like to do is released [sic] jury to come back at 1:15. And then I would like to formerly move my other exhibits into evidence. I've got them in order, and I've given the Clerk a numbering key to all them, just go ahead and get those in while the jury is out. I can do it in the jury's presence.

THE COURT: How long will that take?

MR. CORIN: If the State has no objections, I'm just going to move them in to evidence and have them numbered 1 through 50.

[794]MR. HANKINSON: I think it should be done in front of the jury that they be offered in to evidence.

MR. CORIN: That's fine.

MR. GUARISCO: They should be pre-marked.

THE COURT: Why don't we go ahead and break until 1:15 and go ahead and get the logistics lined up. And we'll go ahead and take the doctors at 1:15. How long do you think they are going to take?

MR. CORIN: Forty minutes.

THE COURT: And then we'll just go ahead and pump up those exhibits then.

MR. CORIN: Well, I think maybe what we can do is I'll given them to the Clerk in the order. He's got a key. And then I'll just move them in when the jury comes back.

(END OF BENCH CONFERENCE.)

THE COURT: Ladies and gentlemen of the jury. We'll take a lunch recess at this time and reconvene at 1:15 for – I think you have two more witnesses and then some exhibits.

MR. CORIN: Yes, Your Honor.

THE COURT: We'll be in recess until 1:15.

(RECESS TAKEN FROM 12:00 TO 1:15 P.M.)

[795]THE COURT: Do we have anything to bring up before the jury comes in?

MR. CORIN: Just, I think, when the jury comes in, if I could then just move my documentary exhibits into evidence. I don't know which would be the best. Just refer to them as Exhibits Nos. 1 through 49. And No. 50 has already been introduced. Exhibits with those numbers for the Defense.

THE COURT: Have they already been marked for identification?

MR. CORIN: Yes Your Honor, they have.

THE COURT: I think all you have to do would just simply be to move Defense Exhibits 1 through 49 into evidence. No objection. They would be in.

MR. CORIN: Thank you.

THE COURT: Bring in the jury.

(JURY ESCORTED IN THE COURTROOM.)

THE COURT: All right, sir. Mr. Corin, you indicated you have a motion at this time?

MR. CORIN: Yes, Your Honor. I would move for the admission of the Defense Exhibits Nos. 1 through 50. They are documentary in nature and have been already marked by the Clerk for identification purposes.

[796]THE COURT: No objection from the State?

MR. GUARISCO: No objection.

THE COURT: Let the record show the documents Defense Exhibits 1 through 49 now be received into evidence.

Mr. Corin, you may proceed.

MR. CORIN: Your Honor, I'd like to call Dr. Ekwall.

* * * * *

Whereupon,

MERTON EKWALL, M.D.

was called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORIN:

Q Doctor, would you state your name, please.

A Merton L. Ekwall.

Q And what is your occupation?

A Physician and surgeon.

Q And do you have a field of speciality?

A Yes, I limit my practice to neurology and psychiatry.

Q Doctor, if you would, would you explain a little bit about your background, education, training and experience.

[797]A I graduated medical school at the University of Nebraska in 1946, had a year's rotating internship at the Santa Barbara California Cottage Hospital. Two years of residency training in psychiatry at Nebraska State Hospital.

MR. CORIN: Doctor, I think the State might be willing to accept you as a expert.

MR. GUARISCO: Your Honor, we'll stipulate that Dr. Ekwall has testified in the circuit courts as an expert.

THE COURT: And acknowledge that he's subject to declaration by the Court as an expert in the field of neurology and psychiatry.

MR. GUARISCO: Yes, sir.

THE COURT: Ladies and gentlemen of the jury, the witness before you is now declared by the Court to be an expert in the field of psychiatry, neurology. And like all experts, he is like all other witnesses with one exception. By virtue of that training and expertise, he has by his qualifications established his right to place before you an opinion for your consideration not limited to mere factual recitations.

Mr. Corin, you may proceed.

BY MR. CORIN:

[796]Q Dr. Ekwall, did you examine a man by the name of Joe Elton Nixon?

A Yes.

MR. CORIN: If I may, Your Honor, I'd like to ask Dr. Ekwall to examine State's Exhibit No. 17 and see if that's the gentleman that he examined.

A Yes, that appears to be the same man.

Q Thank you. Doctor, was that examination of Mr. Nixon done at my request?

A Yes.

Q And over what period of time did you examine Mr. Nixon?

A I examined him on two separate occasions in my office. The first was on March 28th of this year, at which time he did a psychological testing and we obtained the preliminary history from him, and then again on April 11th, 1985, at which time we did more examinations.

Q You've written a report concerning Mr. Nixon; have you not?

A Yes.

Q And you completed your examination of Mr. Nixon prior to the writing of your report?

A As much as I felt I could.

Q Did you have additional information and [799] documents concerning the case and Mr. Nixon in performing your examination?

A Yes, before I ever saw him, I had the privilege of going over reports of psychiatrists and his various workers that have worked with him through the years. He had been in disciplinary trouble ever since he was a young boy aged ten. And there were many psychiatric reports and psychological reports that I had a chance to go over before I saw him.

I think this was important that the reports from way back showed that there is something about this boy that nobody could quite understand, and they felt that there must be something neurologically wrong or something wrong some place because he was different from others.

Q Did you conclude that he was different from others based on your examination?

A At the end of my examination, that's still my opinion that he's different.

Q How so? Can you explain that a little further to the jury.

A Well, you have to go into all the details of this boy's life. The main thing that originally came up was he just didn't seem to respond to discipline or to direction or he didn't seem to learn from experience. [800] He just was not the kind of boy that, at least in Marianna, that they felt they could really help. Every time he went there, he came out just the same as when he went in. He didn't change. The psychiatrists wondered about this. They determined he wasn't psychotic. He wasn't neurotic.

They really couldn't find any illness to account for it. Physically healthy. Everything about him looked good except he just wasn't quite right. On that basis, I felt it was important to try and investigate neurologically whether or not he had something that we could find to account for why he's different.

On that basis, I did some psychological testing in my office. I did a electroencephalographic trcing [sic], a brain wave tracing. I did a neurological examination, all the usual psychiatric evaluation [sic] evaluations. And still, it's difficult to come to any definite reason why he is the way he is.

Q He's not psychotic as that term would be traditionally know in the psychological or psychiatric circles?

A I could not find any evidence of gross psychosis. He has brief psychotic episodes, as far as psychiatry is concerned, when he's intoxicated or when [801] he's under the

influence of drugs and so forth. These are what we call psychotic, but they are not diagnosable diseases. He doesn't have the disease.

Q Did you have an impression as to whether he was participating in your testings to the full extent of his capabilities as opposed to someone who was being a little disingenuous or trying to cover up?

A He was quite cooperative in my office and answered all questions and would even volunteer some information. He seemed to give a very good history. And yet, because of the past history I had obtained from other sources about his ability to fabricate and tell lies, I was a little on the suspicious side of the story, but his story to me sounded logical and sounded coherent when he gave it to me.

However, I found out since then that the story he gave me is different than the story he's given to other doctors and different than the story that he gave the Sheriff's Department.

Q So, there are several stories?

A Several versions of what was going on.

Q That would be consistent with your report where you indicate he has a life-long history of lying?

A Yes.

Q Creating fantasy situations. Blaming others [802] for his troubles?

A All this is very – I can't think of a good word. You never can predict when he's lying and when he's not. He doesn't have any mannerisms that I could discover that would

determine. He tells the truth as he sees it which is not necessarily the truth to anybody else.

Q Do you have an opinion on his intelligence?

A He didn't complete school. Of course, his formal schooling was interrupted by all the incarcerations. He was sufficiently intelligent to solve simple problems. Was able to do serial seven subtractions fairly well. He made quite a few errors, but at least he could subtract. He could add. He could multiply. He knew the usual current events. His intelligence is on the low side of normal, but it's adequate.

Q Do you have an opinion about whether when he killed Ms. Bickner whether he was under some influence of a mental or emotional disturbance?

A Oh, I'm sure he was. From the story I got from him, he had been emotionally disturbed for some time and was rather distraught. And then his whole story is complicated by, not only his mental and emotional state, but also he uses alcohol. He uses [803] pot. He freebases cocaine. All these other factors disturb his ability to think and to reason and to use judgment.

Q That my [sic] not be your conclusion but would it be fair to say that – could you come to the same conclusion if there was no totally objective evidence that he was using those substances at the time of her death? In your circle of expertise, that's known as a self-reporting information?

A That's true. This is the story he gave me, but it had been substantiated by previous reports that he had been using these things at times when it was not a factor in the decision.

Q Would you have an opinion about whether when Jeanne Bickner was killed, Mr. Nixon's capacity to appreciate

his criminality to his conductor [sic] or to conform that conduct to the requirements of law was impaired?

A Oh, yes, I feel it was impaired. He just doesn't operate with a full reasoning capacity, especially at that time. You have to go back several days and see the build-up of the pressures that he was having with his girlfriend, lack of sleep. He'd been up all night, several nights, driving around, drinking up a lot of alcohol. He was just losing control all the time.

[804]Q You do have an opinion as to his competency for trial, don't you?

A Well, for legal competency trial purposes, I'd have to state that in the absence of any diagnosable psychotic illness or severe neurotic illness, the law says he's competent and capable of standing trial. He's not the most competent individual in the world as far as making decisions is concerned.

MR. CORIN: Thank you very much, Doctor.

THE COURT: Cross.

<u>CROSS EXAMINATION</u>

BY MR. GUARISCO:

Q Dr. Ekwall, you were appointed to assist defense counsel in the preparation of his defense?

A Yes.

Q In fact, isn't it true that the purpose of your testimony is to assist Joe Nixon in avoiding the death penalty in this case?

A Well, it's to assist him in finding out whether there was any incompetency or anything that could be found to understand this case.

Q For mitigation purposes in the penalty phase.

A Yes.

Q Do you believe in capital punishment, Doctor?

A I do.

[805]Q Now, your neurological examination of Joe Nixon – was that within normal limits?

A Yes, when we just talk about a neurological examination, examining the cranial nerves, the nerves of the body to see if they are functioning – they were all intact and all within normal limits. I was looking for a possible injury because he had a history of being hit on the head with an iron pipe several years ago and was unconscious.

And I thought maybe he might have had some sort of epileptic focus that might be a reason for why he did what he did and does he what does, but I could not find any evidence of it.

Q So, there was no evidence of any neurological disease or damage?

A Not from my testing on the electroencephalogram.

Q Now, you stated that these crimes occurred in 1984. You examined Mr. Nixon in 1985; is that correct?

A Yes.

Q How long did these examinations take?

A They took about six hours altogether in my office.

Q Now, regarding your report, I believe, in your testimony you mentioned the fact that he had used [806] cocaine, marijuana, alcohol, and had lack of sleep. Who gave you that information?

A This information was from what he gave me as he described his day-by-day activities over the dates prior to and following the killing.

Q Did you verify this information that he gave you?

A I verified it as much as I could by discussing with Mr. Corin to see what facts had been brought out by others. It seemed to fit generally the pattern, although we had found some discrepancies in some of the details as he gives them and the details as they actually happened. He lost track of dates.

Q You said that you read the reports of Mr. Corin submitted and that he has introduced into evidence; is that correct?

A Yes, I read considerable.

Q Do you recall in those reports comments made by the Defendant to individuals that he did not use alcohol and did not use drugs.

A That was stated in the reports back when he was 10, 12 and 13, but from 16 on, they all say he admits moderate use of alcohol or moderate or occasional use of drugs.

Q Have you ever had people that you were [807] evaluating lie to you?

A I'm sorry?

Q Is that common for people that you are evaluating to lie to you?

A To some degree. Actually in the situation wherein those who are competent pretty well understand the necessity to be as honest and truthful as possible and to try and help bring out the facts so that we can deal with the facts when we talk with them.

Q You made the statement that Mr. Nixon told you the truth as he saw it. What does that mean?

A Well, he told me the story as he told it to me hour by hour, and I felt at the time that probably was fairly factual because he gave it in such a way that I felt it was factual.

Q Could it also mean that he was telling you what he wanted you to know for the purpose of this examination?

A I'm sure he was capable of making that distinction and didn't tell me anything he didn't want me to know.

Q Did you tell him why he was being examined?

A Yes.

Q And what did you tell him?

A I told him that he had been referred to me [808] by his attorney and that I was serving as an expert witness and that all things we talked about were such that if they were against

him in any way, it wouldn't have to be brought out. I would be privileged communications, but the examination was for the purpose of finding out why he acted the way he did.

Q And you also say that it would be used in the penalty phase to assist him?

A I didn't because I didn't know that I would say used.

Q Did he know that?

A Did he know that?

Q Yes.

A I'm not sure.

Q Did you interview any of his relatives or friends that observed him prior to and after the murder of Jeanne Bickner?

A No, I did not. That information is separate from the examination that I've performed.

Q Did you read any of the statements that these relatives or friends may have made to law enforcement officers?

[809]A I've read what's come out in the newspapers and what you hear on television but it, but I've been told about it. He was able to tell me some of the things that his brother had said and how he felt about him.

Q But you never interviewed his brother?

A No.

Q Did you listen to his tape-recorded statement to Major Larry Campbell?

A I did not.

Q Did you read the transcript of that statement?

A No, I just heard what was in the television and newspapers the other day which was different than the story I got from him.

Q So, basically what you are telling us here today is that you relied upon what Mr. Nixon told you and what Mr. Corin told you and provided you?

A. Yes, I thought he was a pretty disturbed boy by what he told me. But what comes out in these other stories is even more bizarre yet.

Q Did you recall reading in these reports that Mr. Corin submitted to you that Joe Nixon was very manipulative?

A He can be. When a person gets to know him, [810] they can become quite friendly with him.

Q That he can turn things on and off?

A. He can be very impulsive.

Q That he can give you answers that he feels that you want to hear?

A Yes, I feel he sort of wants to put the best foot forward, although he didn't try and hide the facts of what he did or how he let me know the facts of what he did.

Q Would you classify Joe Nixon as antisocial personality?

A The exact classification has been difficult. We know for sure that he has a personality disorder, but he has –

Q Well, yes or no. Would you classify him as antisocial personality?

A I would. That's part of my – a portion of my diagnosis.

Q And isn't it a fact that a great majority of the people in prison and on death row have antisocial personality disorders?

A Yes, that's true.

Q It's your opinion though that the Defendant is sufficiently free of mental defect disease or derangement; is that correct?

[811]A. Well, my conclusion was that even though he had some brain dysfunction, even though he has drug and alcohol problems, he still does not – .

Q Well, no, Doctor. I'm asking you – in your report you stated that the Defendant is sufficiently free of mental defect, disease or derangement. Now, is that a correct statement from your report. Yes or no?

A I can't answer that. It's not a complete statement.

MR. CORIN: Your Honor. Perhaps if the Doctor was afforded an opportunity to see the complete sentence that counsel refers to, he can give a proper answer.

Q Do you have your report here?

A Yes.

Q You state on the bottom of page two, "As a result of my examination, it's my opinion that Mr. Nixon is sufficiently free of mental defect, disease or derangement and that he would be found competent to stand trial and be held responsible for his actions."

A. Yes. When you complete that statement, why, yes, that was my conclusion because I could not find any overt psychosis or neurosis to legally render him incompetent.

Q And isn't it a fact that Mr. Nixon has the [812] ability to appreciate the criminality of his conduct?

A He knows that what he's done is wrong. He doesn't feel it is wrong as others seem to feel it.

Q In fact, you told me yesterday on the telephone that he did appreciate the criminality of his conduct because he tried to destroy evidence.

A That was one of the reasons why he would be found competent; that he knew that what he did was no acceptable, and he was trying to figure out how to rectify what he had done.

Q Can you predict what Mr. Nixon is going to do in the future?

A I'm still at a loss to really fully understand his behavior, and I will not be able to predict it. I don't feel he's a very good risk for society.

Q Now, I gather from the opinion that you stated to Mr. Corin about his condition during the commission of the crime that you really are not too firm on that opinion; is that correct?

A Too firm on my opinion?

Q You don't have a firm opinion as to his condition when he committed the crime or the murder of Jeanne Bickner?

A. No, other than going over the complete [813] longitudinal history and knowing he's been an angry young man all along; that he does things to attract attention; that he will deliberately commit crimes, steal, shoplift right in front of people; that 48 hours before this he was trying to fight with Wanda right with the policeman standing right there at the elbow. He just doesn't fit the usual criteria of somebody who is fully competent.

Q So, your opinion is not a firm one regarding his condition at the time of the offense?

A That's correct. I'm not –

MR. GUARISCO: Thank you, Doctor.

THE COURT: Redirect examination.

REDIRECT EXAMINATION

BY MR. CORIN:

Q Just a couple of things. Doctor. Mr. Guarisco asked if you were essentially hired by me.

A Essentially, yes.

Q Doctor, at any time during the period of time since your appointment as an expert to examine Mr. Nixon and this moment, have I ever indicated to you what result, conclusion, opinion I expected from you as an expert?

A No, none whatsoever. I evaluate somebody and give my own opinion.

[814]Q Did I tell you that I wished you would conduct your examination and if you are called as a witness, to give the most honest impressions you could of Joe Elton Nixon.

A I don't recall the exact request, but that's what I do when I examine somebody.

Q That's what you've done today?

A It's been a very confusing case psychologically and neurologically.

MR. CORIN: Thank you, sir.

MR. GUARISCO: No further questions.

THE COURT: You may step down. Mr. Corin.

MR. CORIN: Your Honor, we'd like to call Dr. Doerman, please.

* * * * *

Whereupon,

ALLEN DOERMAN

was called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CORIN:

Q Sir, would you state your name, please.

A My name is Allen L. Doerman.

Q And what is your occupation?

A I'm a clinical psychologist.

[815]Q And do you have a field of speciality?

A Yes, neuropsychology.

Q And can you tell us a little bit about your background, education, training, experience, things you've done.

A A have a Bachelor's Degree from Thomas Moore College in Kentucky. I have a Master's Degree in clinical psychology from Xavier University in Cincinnati and my Doctoral Degree is from Wright State University in Dayton, Ohio.

I did my internship at the VA Hospital in Cincinnati. Half of that internship was specificialization [sic] in neuropsychological testing. Afterwards, I did one year's post-doctoral training under the supervision of a diplomate at the Cincinnati Neurological Institute. And following that year, I worked there for one year as a neuropsychologist.

Q How long have you been practicing in Tallahassee?

A I've been here since December of '84.

Q And pursuant to your practice, have you examined individuals based on Court appointments?

A Yes.

MR. CORIN: Your Honor, I would submit Dr. Doerman as an expert in the this [sic] stated field.

[816]THE COURT: Voir dire.

MR. GUARISCO: Yes, Your Honor.

VOIR DIRE EXAMINATION

BY MR. GUARISCO:

Q Have you testified as an expert in the Circuit Court here in Leon County before?

A No, sir.

Q Have you testified in any Court as an expert?

A I testified in deposition, but not in a courtroom.

THE COURT: Is there objection?

MR. GUARISCO: No objection.

THE COURT: Ladies and gentlemen of the jury, now, I now declare Dr. Doerman to be an expert in the field of neuropsychology qualified to place an opinion before you for your consideration. Mr. Corin.

CONTINUED DIRECT EXAMINATION

BY MR. CORIN:

Q Doctor, were you appointed to examine a man by the name of Joe Elton Nixon?

A Yes, sir, I'd [sic].

Q I'd like to show you State's Exhibit 17 and see if you can identify that photograph.

A That's Joe Nixon.

[817]Q This is the man that you examined pursuant to a Court appointment at my request?

A Yes.

Q Over what period of time did you examine Mr. Nixon?

A I worked with him a total of seven or eight hours, somewhere in there, through over almost a month's times. I saw him first in my office, and then I saw him on several occasions at the Leon County Jail.

Q A total period of seven or eight hours?

A Yes.

Q And can you tell us that types of tests that you conducted upon Mr. Nixon. You are free to refer to your report. Your report has been admitted into evidence.

A I put him through a battery of neuropsychological tests and also a battery of personality tests. Should I go on?

Q Sure.

A The neuropsychological tests look at the correlation between behaviors and brain function. For example, the ability to do this. You have to have intact muscles and nerves in your hand and arm, but there's also a part of the brain called the motor strip which has to be functioning.

[818] I put Mr. Nixon through several different tests which look at different behaviors which are correlated with parts of the brain. I compared his functioning on those tests to those of a normal adult.

Q Other types of tests that you conducted?

A In the personality testing, there was an IQ test.

Q Did you come to the conclusion about his IQ at the end of your test?

A On the Wexler [sic] Adult Intelligence Scale, he achieved a full scale IQ – I believe it was 74 which is in the borderline range. Average intelligence is seen as beginning at 90. Low average begins at 80 IQ, and between 70 and 80 is in the borderline range. Below 70 is considered mentally retarded.

Q Based on some of the testing, did you come to a conclusion about whether there was an indication of brain damage?

A The focus of my neuropsychological testing was a group of tests that's called the Halsted-Reitan battery which is a well-accepted group of tests which look at brain functioning. On that, there are cut-off scores from brain damage versus nonbrain damage. Of those tests, all of them were in the brain damage range.

[819] Barely in the brain damage, but they were in the brain damage range which yielded an impairment index which is

kind of an average of all those scores of 110. Anything above point five is considered brain damage. So, I think there is some brain damage in Joe Nixon.

Q Doctor, in performing your examinations of Mr. Nixon, did you have certain information that – did I supply you with some documents?

A Yes.

Q You have a copy of his recorded statement that he had given the Sheriff's Department.

A Yes.

Q And did you have a taped statement in deposition of Willie James Harris? Do you recall?

A Who is that? The name slips my –

Q To refresh you recollection, I believe he's the gentlemen that rode with Mr. Nixon in the car subsequent to the killing of Ms. Bickner?

A Nicknamed Tiny?

Q Tiny Harris.

A Yes.

Q Did you have copies of the report and deposition of Major Larry Campbell?

A Yes.

Q Did you have copies of statements and [820] depositions of John Daniel Nixon and Wanda Robinson?

A Yes, sir.

Q Did you also have various presentence investigative reports, psychological screening reports and documents from institutions, for lack of a better way to say it?

A Yes.

Q Did they assist you in your examination of Mr. Nixon?

A Yes.

Q Did you come to any conclusions about Mr. Nixon before you had thoroughly reviewed that information?

A I received that information after my first examination of Mr. Nixon. By that point, I had reached some ideas about his functioning. Even then I felt like there was some degree of brain impairment. After looking over that data, it certainly helped me reach some conclusions about his personality functioning.

Q You reviewed all those documents and spent all the time with Mr. Nixon before you wrote your report?

A Certainly.

Q Explain that personality situation, if you would, to the jury.

[821]A My final diagnosis on Joe Elton Nixon was a mixed personality disorder with elements of antisocial personality, borderline personality and narcissistic personalities. That's from the diagnostic and statistical manual which is a reference book of diagnoses that are currently accepted in psychiatry and psychological [sic].

Some of the key points in the personality diagnosis are the fact that his IQ is in the borderline range. He's not going to be very good at problems solving. He's going to have difficulty in problem solving in novel situations.

His primary mode in dealing with interpersonal conflict between two people is to immediately start plotting revenge. The Rorschach examination which is a projected personality test indicated that under normal situations he does have adequate reality contact.

I don't think he's psychotic. However, when he's put under a lot of stress, he has the capacity to break down and not perceive reality as the rest of us do. In addition, I gave him the Minnesota Multiphasic Personality Inventory and the Milan Clinical Multiaxial Inventory, both of which are true/false self-reported personality inventories. And both of them indicated the [822] personality disturbance as I talked about before and some question of his ability to accurately perceive reality when he's under stress.

Q Your conclusions about Mr. Nixon are not pretty, are they, in terms of being very helpful to his cause, so to speak? You find him to be an unremorseful person.

A Precisely.

Q You find him to be a person who, while not psychotic is what? Not normal?

A Not normal in several senses. His IQ puts him at the fifth percentile as compared to the population at large. The spotty diffuse brain damage, I think, was indicated by the Halsted-Reitan battery probably limits his ability to problem solve to adjust to new situations, plus he has the personality disturbance.

Q Is any of this treatable?

A I don't have much hope for remediation with Joe Elton Nixon. The data you furnished me with, his long history prior to this event indicates that many people have tried to work with him in various juvenile settings and without much success.

Q You would conclude that he's a dangerous person?

[823]A Yes.

Q That he should never be in free society.

A Yes, that's correct.

Q Do you have a thought or an opinion about when these crimes were committed whether Mr. Nixon was under some form of disturbance emotionally or whether he could conform his conduct to the requirements of law to appreciate the conduct, not in the psychotic sense, but in a less restrictive sort of sense?

A I think at the time the event occurred, Joe Elton Nixon was under a tremendous amount of stress. His brother, who in an earlier interview, mentioned that he was closest to his brother of anyone. Wanda Robinson, whom he in his own way loved and still claims to love, had dropped him for John.

This was very stressful. He was drinking some in the days prior to the crime. He had gone without sleep. I think he was under a great deal of stress, a great deal of stress.

Q That could have affected this situation possibly?

A It could have affected his situation – it could affect any of us. I think it particularly affected Joe Elton Nixon

because of his IQ, because of the suspected brain damage, because of his long history [824] of incarceration. He doesn't have the cognitive wherewithal that the rest of us do.

Q Cognitive withwhereall [sic]. In common terms, explain in common terms what you think his situation is.

A I think when he runs in to a situation that's stressful that doesn't make sense, that there are no obvious ways out of it or obvious solutions, he doesn't come up with the right answers. He starts thinking revenge. He starts thinking: I'll act out physically. He doesn't reason things through like a normal adult human being. That's what I mean by that.

Q In your report, you seem to think that perhaps Jeanne Bickner's death could have been a form of misdirected rage at the situation that he found himself in at the time in reference to Mr. Nixon?

A Yes.

Q Is that possible?

A That's my hypothesis that's based on inference. There's no way to ever know exactly what was going through Joe Elton Nixon's mind at that moment or when he was at Governor's Square Mall, but that's my best hypothesis.

That's based on – one of the techniques I used with him was to ask him about his earliest recollections which is a projective technique meaning [825] that the data I get from that, I don't interpret literally because all of our memories of past events are distorted by where we're at today.

His recollection of past events – three of the first recollections he gave me were recollections of seeking revenge

to people that had mistreated him. I think revenge is a primary fact in the way he operates.

MR. CORIN: Thank you, Doctor.

CROSS EXAMINATION

BY MR. GUARISCO:

Q You believe in capital punishment, Doctor?

A Yes, I do.

Q Now, you were told about the Defendant's extensive use of alcohol, drugs, told about his lack of sleep, told about his love spat?

A Could you repeat that.

Q His love spat with his girlfriend. Who told you this?

A Joe Elton Nixon.

Q He told you that. Did you believe him?

A Yes.

Q You believed him when he told you he drank a lot of alcohol and used drugs. Did you confirm what he told you?

[826]A I didn't interview anyone that lived with him that could verify that, no, sir.

Q So, you took hook, line and sinker what he told you?

A I believed him, yes.

Q Have you ever had anybody tell you a lie that you were examining?

A Yes.

Q You think that's a possibility here with Mr. Nixon that he could have told you a lie about his drug usage?

A It could be possible, yes.

Q During your evaluation of Mr. Nixon, did you read the police reports?

A Yes, sir.

Q Also, I believe you stated that you read the reports that Mr. Corin submitted to you from the various institutions that Mr. Nixon had been in.

A Yes.

Q Do you recall reading comments in these reports that Mr. Nixon was very manipulative?

A Yes.

Q That he could turn it on and off like a light switch?

A I don't remember that exact statement.

[827]Q But he knew how to play the game?

A He had been incarcerated long enough to learn the rules, yes.

Q Now, according to the observations in your report, you found Mr. Nixon to be alert, oriented and cooperative; is that correct?

A Yes.

Q In fact, you found that there was no bizarre or delusional material surfacing during your evaluation; is that correct?

A That's correct.

Q In fact, you also stated in your report that Mr. Nixon demonstrated the capacity for adequate reality contact; is that correct?

A Under unstressful situations, situations devoid of emotion.

Q You also mentioned in your report that he was not guided by voices or in any way responding to visual or auditory hallucinations; is that correct?

A That's correct.

Q Now, I noticed in your report, Doctor, that you questioned the validity of the MMPI, is that correct, that you gave Mr. Nixon?

A That's correct. There is some data that says, though, when the validity scale is elevated and [828] the scale eight and scale six, which are either scales, elevated that you can still interpret it with some caution.

Q But you still questioned his [sic] validity?

A Yes.

Q How would you had classify a person with a total IQ of 88?

A 88?

Q Yes, sir?

A Low average.

Q Average?

A Low average. That's a different group.

Q You mentioned that Mr. Nixon was antisocial. What does that mean?

A Several things. Antisocial personalities generally behave in this fashion. They want what they want when they want it. They have the inability to delay gratification. They frequently don't respond well to authority figures, and there seems to be a lack of ability to plan ahead.

Q In fact, would it be safe to say that the great majority of the people in prison and on death row could be classified as antisocial personalities.

A I have no information about that.

Q You have not read information in your [829] studies?

A I don't know what the research says on that, no.

Q You have not done any research on that?

A I've done research, but I haven't done research on how many prisoners on death row have antisocial personality

characteristics. I know that many people that are incarcerated are antisocial personality disorder.

Q So, you might think then that there's a lot of people on death row that may not be antisocial personality disorders?

A I don't know. I haven't read on [sic] anything on it.

Q Well, would you be safe to say that a majority of the criminals have antisocial personalities?

A Many criminals do.

Q Now, you stated during your testimony that you think that there is brain damage. Now, are you positive?

A Psychological testing, neuropsychological testing is based on inference. I didn't remove his skull and look at his brain either microscopically or microscopically [sic].

Q What you are telling us is that a lot of [830] these tests deal in probabilities?

A I state that in my report, yes.

Q You are not a medical doctor; is that correct?

A No, sir, I'm a psychologist.

Q You know Dr. Ekwall?

A Yes.

Q Are you aware of the fact that Doctor Ekwall didn't find any brain damage?

A I believe the instrument he used is based on inference at [sic] well.

Q The electroencephalograph?

A Right.

Q Now, you stated that Mr. Nixon is not treatable; is that correct?

A In my opinion, he probably is not treatable. Yes, that's correct.

Q So, he's going to be a problem from here on out. Would that be safe to say?

A That's a possibility.

Q He's going to be a problem n prison and out of prison; is that correct? Would that be safe to say?

A I would like to qualify that. I think in [831] prison from the testing I did with him, he does better in structured situations. I think he's going to be less of that problem in prison then he would be in free society.

Q Did you read those reports closely that showed that he was a disciplinary problem in the institutions that he was in?

A Disciplinary problems in prison are a lot less than his behavior outside prison.

Q You say that he is a dangerous person; is that correct?

A I would agree with that.

Q And he's going to continue to be a dangerous person; is that correct?

A Quite possibly.

Q The bottom line of your testimony, Doctor, or your opinion in your report is that Joe Nixon murdered Jeanne Bickner because he was mad at this girlfriend; is that correct?

A Enraged at her, yes.

MR. GUARISCO: No further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. CORIN:

Q Doctor, that's one of the last lines of your [832] report. That's not necessarily your final conclusion. You would just be speculating that that could be an explanation for it; is that correct?

A That was my hypothesis regarding the dynamics of why.

Q In looking for an explanation for the death of Jeanne Bickner, that's a possible explanation; not an absolute explanation but a possible explanation?

A I think there are many precursors to that behavior besides the revenge.

Q In your opinion, did he fake or somehow manipulate the testing which led you to conclude that he had a brain impairment?

A I talked with him prior to the examination. I explained that I was doing this for the Public Defender's Office. He appeared qualitatively to work diligently throughout the exam, was well motivated and cooperative. Seemed frustrated by his failures. I think he put forth a sustained effort.

Q Did I ever ask you in discussions I've had with you to come to any kind of conclusion about Mr. Nixon?

A No.

Q To just do the best job you could in writing your report.

[833]A Right. And the [sic] be unbiased. I think that's reflected in the report.

Q You say some pretty ugly things in there about Mr. Nixon, don't you. Well –

A There are some things in there that might be detrimental to his defense, yes.

Q Mr. Guarisco asked you if you believed in capital punishment. You said you did. You think it should be applied to Mr. Nixon?

MR. GUARISCO: I'm going to object to that, Your Honor. That's not appropriate for this witness to answer.

THE COURT: Approach the Bench, gentlemen.

(WHEREUPON, A BENCH CONFERENCE WAS HELD AND THE FOLLOWING PROCEEDINGS HAD.)

THE COURT: We do have a problem. You have introduced that evidence into the case. You cannot open the

door. Having gone in that direction, he's entitled to inquire as to whether he has any inhibitions, you know, or whether are his thoughts about the death penalty or lack of thoughts about the death penalty had any effect at all on his opinions or its weight.

MR. GUARISCO: I'll withdraw the objection.

(END OF BENCH CONFERENCE.)

[834]THE COURT: Let the record reflect the objection is withdrawn.

BY MR. CORIN:

Q Doctor, I believe my last inquiry and question of you was: Do you believe the death penalty should be applied to Mr. Nixon? Do you have an opinion on that?

A My feeling, my opinion, about capital punishment is that it's appropriate if the perpetrator of such a crime is an intact human being. And I don't think Joe Elton Nixon is.

Q He's not intact?

A No, sir.

MR. CORIN: Thank you, sir.

THE COURT: Recross.

MR. GUARISCO: No cross.

THE COURT: You may step down.

THE COURT: Mr. Corin.

MR. CORIN: Your Honor, we have no further witnesses nor exhibits at this time.

THE COURT: The State has the opportunity of rebuttal. You wish to review notes an [sic] talk to Mr. Hankinson?

MR. GUARISCO: Yes.

THE COURT: In that event, we'll take a break [835] at this point. 15 minute, ladies and gentlemen of the jury. Mr. Hankinson and Mr. Guarisco confer.

The State has the opportunity to present rebuttal evidence at this point, should they so desire to do that. And prudent talking dictates that attorneys talk with each other before announcing what they will do. So, we'll take a break at this point.

(BRIEF RECESS.)

THE COURT: Mr. Guarisco, I understand you wish to present two rebuttal witnesses.

MR. GUARISCO; That's correct, Your Honor.

THE COURT: Let's bring in the jury.

(WHEREUPON, THE JURY WAS BROUGHT IN THE COURTROOM.)

THE COURT: We'll move to rebuttal evidence presented by the State.

* * * * *

Whereupon,

ROY MCKAY

was called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q Would you please state your name for the record, please.

[836]A Roy Captain McKay.

Q And what is your occupation?

A Assistant superintendent for the Dozier School for Boys in Marianna.

Q And how long have you been there?

A Twenty-four and a half years.

Q Can you tell us a little bit about your educational background?

A Yes, I'm a special education major and education teacher, and I have for lacking 12 hours of having a Master's Degree.

Q In psychology?

A Yes.

Q While you were employed at Dozier School, did you have occasion to come in contact with Joe Elton Nixon?

A Yes, I did.

Q Do you recall approximately when that was?

A The first was in 1972, and the last time in 1976.

Q I show you what's been marked and introduced as Defense Exhibit 1. Can you recognize the individual in this exhibit.

A Yes.

Q Is that the Joe Nixon that you knew?

[837]A Yes, it is.

Q Did you have a lot of contact with Joe Nixon while he was in school? Dozier School?

A On the last commitment, I had a greet [sic] deal of contact with Joe.

Q Do you what know [sic] Joe Nixon's IQ was back then?

A Would you repeat the question?

Q Do you know what Joe Nixon's IQ was?

A Yes.

Q What was that?

A Eighty-eight.

Q And how did that compare with the average in the school?

A It was a little above average. The average IQ at the institution at that time was 84.

Q From your observations and dealings with Joe Nixon while he was in Dozier School, do you have an opinion as to whether or not he knew right from wrong?

A Yes, he knew right from wrong.

Q Again, sir, based on your observations of Joe Nixon while he was in Dozier School, would you have considered him or did you consider him back then a manipulative person?

A Very much so. To the point that we were [838] concerned about his release.

Q He knew how to play the game?

A Yes.

Q And he knew how far he could push?

A That is correct, because he knew exactly where the gray line was, and he would not cross that line.

MR. GUARISCO: Thank you. No further questions.

THE COURT: Any cross examination, Mr. Corin?

MR. CORIN: No, sir.

THE COURT: You may step down.

MR. HANKINSON: We would call Major Larry Campbell.

THE COURT: Major Campbell was previously sworn and remains under that oath.

* * * * *

Whereupon,

LARRY CAMPBELL

was called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HANKINSON:

Q For the record, would you state your name [839] again please, sir.

A Larry Campbell.

Q And I believe you testified earlier that you are second in command at the Sheriff's Department?

A That's correct, sir.

Q And I also believe you earlier testified that on the 14th of August, 1984, you had transported the Defendant in this case, Mr. Nixon, from 910 Millard Street to the Sheriff's Department?

A Yes, I did.

Q During that trip from Millard Street residence to the Sheriff's Department, did you have any discussion with Mr. Nixon about a pending criminal matter?

A I did, sir.

Q And how did that come up?

A As I was explaining Joe Nixon's rights to him on the 13th, I was going into detail on his rights. I made a statement to him, "Joe, you've been down the road before. You know what I'm saying to you, don't you?"

He said, "Yes, sir, I do." I asked him at that time I said, "You've got something coming up now, don't you, or you've got something in the works at this time, don't you?"

A He said, "Yes, sir, I do."

[840]Q And go ahead. What discussion did you have about it from that point on?

A I asked him, "Well, what is it?" He said, "It's a little thing coming up. I'm probably going to get some probation or two weeks or ten days."

Q I said, "That's before Judge Miner, isn't it?"

A He said, "Yes, sir." I said, "Well, Judge Miner is a pretty hard judge, isn't he? He don't usually give people ten-day sentences." He said, "Yes, but that's all I'm going to get out of the [sic] it."

Q [sic] I said, "You and Judge Miner must be mighty tight." He said, "Well, that's all I'm going to get."

Q What was the tone of the conversation as you were discussing it?

A Very casual, laid back.

Q Now, on a different subject, have you had the experience through the years of law enforcement that you've been in of noting the signs and effects of alcohol and drugs?

A I have, sir.

Q And would you relate to us what experience you've had in that, please, sir.

A I've been qualified to testify in courts in Florida and, I believe, Federal Court also as an expert [841] in the field of narcotics since 1965. I was an undercover agent actively working drug cases for approximately 12 years. I've been supervising the working of drug cases for I don't know how many years.

Q And specifically, are you familiar with the effects on individuals of alcohol, marijuana, and cocaine?

A I am, sir.

Q On August 14 of '84, about how long were you with the Defendant in this case, Mr. Nixon?

A Probably around three hours.

Q Did you note any signs that Mr. Nixon had been using or was under the influence of alcohol, marijuana or cocaine?

A No, sir, I did not. I observed Mr. Nixon rather closely in that regard to making an evaluation myself and also questioned him about it.

Q And what did you observe?

A Joe did not have any of the symptoms or visual symptoms associated with drug use. There was no odor of any, say, the use of marijuana or incense or something of that nature about his person. There was no drugs on him when I arrested him.

The pupils in his eyes were not dilated. He was not on – as I refer to the nod which would be [842] common for somebody that was using an opium-type drug, nor was he speeding, something that was using like an amphetamine drug or drug such as codeine or cocaine. Alcohol was not on his breath.

He had no redness of his eyes or such as. His speech was well within the limits for him. He was not slurring his words any more than normal conversation. He was fully aware of everything that was being said to him and was answering in a conversant manner.

He was not making any complaints of any physical problems other than being sleepy to some extent. He yawned a number of times while we were conversing. He did not speed or did not talk in such a fast manner or jump from subject to subject or make fast movements or things that would be normally associated with somebody that was under the influence of a stimulant-type drug.

MR. HANKINSON: Thank you.

THE COURT: Mr. Corin.

MR. CORIN: No, sir. No questions.

THE COURT: You may step down.

MR. HANKINSON: We have no further testimony to present, Your Honor.

THE COURT: That concludes the evidentiary [843] phase?

MR. CORIN: Yes, Your Honor it does.

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[1004] THE COURT: We're in the closing argument stage, now, of the penalty phase of the proceedings. Under those procedures, we will hear first from the State, to be followed by the defense.

Mr. Guarisco, for the prosecution, will present that argument.

Mr. Guarisco, you may proceed.

MR. GUARISCO: Thank you, Your Honor.

[1005] Ladies and gentlemen of the Jury, again, on behalf of the State of Florida, I would like to thank you for your patience and for your careful attention during this trial, and your willingness to serve.

This is a difficult task for everybody. No one enjoys the decision that has to be made today. I do not take pleasure in asking for the death penalty. But the law does provide for the death penalty in proper cases, where aggravating circumstances are established.

Everyone on this jury agreed to follow the law. Everyone on this jury agreed that they could vote to recommend the death penalty in a proper case.

This is a proper one for the recommendation from you for the death penalty. The facts presented in this case establish enough of the legal requirements for a recommendation by you that the death penalty be imposed.

Before the State of Florida gets into a discussion of aggravating circumstances, let's take a look at what the defense has placed in mitigation. Let's analyze what has been presented in mitigation.

What did Betty Nixon say? Really, not much of anything. He had problems in school, he had problems with the law. No one doubts that. No one questions [1006] that.

Mr. Corin introduced documents that will show you that the defendant, Joe Nixon, is a habitual criminal. She did say that Joe Nixon had emotional and mental problems growing up.

Now, if you look at some of the documents that the defense has introduced into evidence, you will see statements in the reports that Betty Nixon said, to her knowledge, Joe did not have any psychological or psychiatric problems.

These are reports that probably deal with him back when he was in the youth schools that he attended or that he was placed in.

So, in essence, she kind of contradicted herself.

Now, Wanda Robinson testifies that on two occasions, she had problems with the defendant. Once on Macomb Street, and another time at 910 Millard Street, which was her residence; that the defendant tried to hurt her, that she was frightened of him. Yet, she testifies on the witness stand that she still loves the person that frightens her.

Now, Deputy Bevis, who is also a defense witness, contradicts Wanda Robinson. He was one of the deputies who responded to 910 Millard Street when [1007] Wanda and the defendant were supposedly having a disturbance.

Now, when he go there, there was no disturbance, no laws were being broken, no signs that any law had been broken. The defendant was fine. The defendant was not upset. The defendant was calm. There were no signs that the defendant was under any emotional duress or distress. The defendant didn't say anything about wanting to hurt someone. All the defendant wanted to do was get a ride back to town. And when Deputy Bevis and the other deputy consulted with Wanda Robinson, she agreed to take care of that problem for the defendant.

Now, does that sound like a disturbance?

Officer Eldridge then testified for the defense that he witnessed Wanda Robinson and the defendant having an argument on Macomb Street, that escalated momentarily. On his observations, it seemed to him that Wanda was causing most of the problems.

Now, the defendant did strike her, he was arrested on a misdemeanor battery charge, taken to the station and released, as the officer said, because the criteria was met for his release.

He did state that after the incident had escalated, the defendant did calm down. And he also [1008] said that this kind of incident was not unusual for that area.

Officer Eldridge said that at the station, the defendant apologized to him, he was calm, he was rational, he was not under any emotional distress; and that when the defendant left the station, he was calm, he was rational, he was not upset.

All this supposedly occurred around the week prior to this murder, or a few days prior to this murder.

When Mr. Corin stated in his opening argument that the defendant had been drinking and was using drugs and was out of control, this is the time period that we're talking about. And the facts that he presented didn't show that.

Nothing in the testimony put on by the defense, so far, supports their theory that the defendant was under the influence of drugs or alcohol and having conflicts with his girl friend.

Now, Doctor Ekwall was not helpful to the defense's theory, if you recall his testimony. He was unsure of what the problems were. He said his opinion as to the defendant's mental condition at the time of the murder was not firm. He really didn't know what was going on. He said the defendant was within normal [1009] limits, though, in his neurological examination. There was no evidence of neurological disease or damage. He said the defendant was sufficiently free of mental defect, disease or derangement and competent to stand trial. He said the defendant was responsible for his actions. He said that the defendant knew the criminality of his acts at the time of the murder. He said the defendant was not psychotic. He agreed that the defendant was a manipulative person.

The parts of Doctor Ekwall's findings regarding the defendant's use of alcohol, drugs, and his lack of sleep, and the defendant's frustration over his girl friend came from the defendant, himself, whom Doctor Ekwall says has a tendency to lie and fabricate.

Doctor Ekwall hypothesized, based on what he was told by the defendant.

Now, are you going to take the doctors' speculation, or are you going to rely on the facts that were presented at trial and incorporated in this proceeding for your decision?

Doctor Doerman also was not helpful to the defense in advancing the defense's theory in mitigation.

He contradicted Doctor Ekwall about whether or not the defendant had brain damage. Doctor Ekwall, in [1010] essence, said that there was no sign of brain damage. Yet, Doctor Doerman says, from his testing, there were signs of brain damage. However, he went on to say that in his testing he was dealing with probabilities and that he could not be positive.

He did call the defendant a dangerous person. Doctor Doerman did say that the defendant could be manipulative, the defendant was not remorseful for what he did, that during his testing the defendant seemed to be alert, oriented, cooperative, he was not bizarre, he was not delusional.

Now, I'm not going to stand here and tell you that the defendant is the everyday normal citizen. Anybody who commits murder is not the everyday normal citizen.

But the defendant knew exactly what he had to do, how he was doing [sic] to do it, and that he had to destroy the evidence.

The bottom line is that the defendant is just pure mean. And no prison is going to help him.

Now, Doctor Doerman did try to tell you what you should recommend.

This decision as to whether or not the defendant gets the death penalty or life imprisonment is up to you. You know more of the facts than [1011] Doctor Doerman does.

Now, the defense introduced somewhere around 50 documents into evidence.

You should examine some of these documents. Because an examination of these documents will reflect that the defendant was manipulative, that he knew how to play the game, he knew the proper answers, he could turn it on and off like a light switch, that the defendant knew right from wrong, that the defendant had admitted that he did not use drugs; and then, on occasions, admitted moderate use; and that he drank occasionally.

An adult prison reception center said that the defendant had no psychiatric problems. The defendant was not psychotic. The defendant had the ability to handle frustrations within normal range. That the defendant had the ability to handle problems. That the defendant had an average IQ, contrary to what Doctor Doerman says.

A lot of what is in the documents that the defense introduced contradicts their theory on mitigation.

Now, of course, Mr. Corin stated in his opening statement that the defendant - and he's going to show that the defendant had a life of many problems and [1012] that no one could help and that everyone failed.

A review of these documents will show you that the institutions that he was in, and the various boys' camps that he went to, did all within their power to help him. But he refused to cooperate. And you'll see, as he grew into adulthood, that he refused to cooperate, that he was a discipline problem, that he's a habitual criminal, that he is dangerous. And he always will be a danger.

The facts that the defendant was under the influence of drugs and alcohol, and hadn't had any sleep prior to the murder, and that he was having problems with his girl friend, that he was

frustrated over his relationship with his girl friend, came from him. And he told the doctors because he wanted the doctors to have that information to come and testify here today, or during this proceeding.

Now, Major Campbell, in rebuttal, came on. And he's an experienced law enforcement officer. And he was an expert, qualified as an expert in narcotics investigations.

He stated that when he brought the defendant in and he spent that time with the defendant, taking the statement, that there were no signs, in his opinion, that he was under the influence of alcohol. [1013] There were no signs that the defendant was under the influence of drugs, based on his observations. And he detailed his reasons.

You also should remember, in the defendant's statement, the recorded statement, he was asked the question; and in his statement, he said he had not used any alcohol.

Also in rebuttal, we put on Mr. McKay, who knew the defendant back when the defendant was in the Dozier Boys School. Had a lot of contact with him. He said that the defendant was manipulative, knew how to play the game, knew where the fine line was, knew right from wrong. And he had an IQ of 88, which was above average for that school, which contradicts what Doctor Doerman says.

So when you examine the evidence presented by the defense in the penalty phase, you will clearly see that there is no mitigation that would justify the recommendation of life imprisonment.

Now, let's look and examine the aggravating circumstances.

The great majority of the facts that apply to these aggravating circumstances that I'm going to mention have already been proven beyond and to the exclusion of every reasonable doubt. And you found so [1014] by returning the verdict of guilty as charged on all charges.

So we have proven these aggravating circumstances, or the State of Florida has, by evidence beyond and to the exclusion of every reasonable doubt.

The first aggravating circumstance is that the defendant was previously convicted of a felony involving the use or threat of violence to the person.

Well, the State of Florida introduced certified copies of his previous convictions for armed robbery and battery on a law enforcement officer.

You will hear an instruction that tell you that these crimes are felonies involving the use or threat of violence to the person. This is a matter of record, now. This is proven to you.

Aggravating circumstance number two: The capital felony of murder of Jeanne Bickner was committed while the defendant was engaged in the commission of a kidnapping. This has been proven to you beyond a reasonable doubt. He abducted Jeanne Bickner from the Governor's Square Mall parking area; he beat her, he threw her in the trunk of the car, he drove her to a remote wooded area off Tram Road and he murdered her. That aggravating circumstance has been proven to you beyond a reasonable doubt. [1015] You found him guilty of kidnapping.

Aggravating circumstance number three: The capital felony, the murder. The capital felony was committed for the purpose of pecuniary gain.

By your verdict of finding the defendant guilty of robbery, you have found that the state has proven that aggravating circumstance.

The defendant's initial intent was to steal the automobile of Jeanne Bickner. And then he stole her rings and her money.

The defendant liked this automobile; he had his eye on this automobile, he singled her out. He liked the automobile because, the evidence reflects, he drove all over town, showing everybody this automobile. He tried to sell this automobile. The defendant pawned the two rings that he took from the victim.

Aggravating circumstance number four, that has been proven beyond a reasonable doubt: capital felony; the murder of Jeanne Bicker was especially heinous, atrocious and cruel. The manner in which the defendant murdered Jeanne Bickner was wicked, evil and outrageous. Jeanne Bickner was in cognition of impending death. She knew that the defendant was going to kill her. She was helpless. She had no control over her life. The defendant had control over her life. And he [1016] showed no mercy. She suffered great mental anguish, anticipating the moment of her death. She was beaten, she was locked in a trunk, she was driven to that remote wooded area in the middle of nowhere, where nobody could intervene to help her. She was tied to a tree. She was told she was going to die. She was choked. She gasped for air. She was subjected to a painful, horrible death, by being burned alive.

And prior to her death, her panties were taken from her. And why did the defendant say he took her panties? To terrorize her.

Prior to her death, she begged and begged and begged that her life be spared.

All of these facts have been proven to you beyond a reasonable doubt.

Aggravating circumstance number five, that's been proven to you beyond a reasonable doubt: that the capital felony, the murder of Jeanne Bickner, was committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification.

This aggravating circumstance has been proven to you beyond and to the exclusion of every reasonable doubt. Clearly, there was no moral or legal justification for the defendant taking the life of Jeanne [1017] Bickner.

The defendant killed Jeanne Bickner in a cold, calculated and premeditated manner. He singled Jeanne Bickner out. He abducted Jeanne Bickner. He took her to a remote wooded area. Took time with her and talked with her.

She told him that she was a Christian. He told her about his past life or being in prison. And it was during this time prior to her murder that he realized that he would have to kill her because she would be a witness against him and could send him away to a place that he did not like, prison.

He deliberately prepared to kill her. He tied her up to a tree. He put a bag over her head. He took the contents our of her car and set them on fire, and then he threw the cover that was on the car on the ground so that it would heat up. He choked her. Then he took that cover that was heated up and threw it on top of her so that she could burn alive.

Then he burned the contents – He burned the contents of her purse. Then he burned his clothes because he thought there was blood on them.

When he could not sell Jeanne Bickner's car, he decided to burn it because he felt his prints were on the car and he felt that the fire would destroy the [1018] prints.

These last three things that I've mentioned about what he did, of course, goes to the fact that he was destroying the evidence.

This case has been the story of the death of Jeanne Bickner. It's been a horror story, demonstrating the terror that she went through and how she begged and pleaded for her life. And the defendant showed her no mercy.

And, now, the defense wants you to show the defendant mercy. Why should the defendant be shown mercy? There is a valid reason to show mercy. There is no valid reason to give him a break. There is no valid reason to reward him.

Don't let this happen. The State of Florida has proven to you sufficient aggravating circumstances to warrant the imposition of the death penalty. And the State of Florida asks you at this time to recommend the death penalty to the Judge.

Thank you.

THE COURT: Mr. Corin, to close for the defense.

MR. CORIN: Thank you, Your Honor.

Good morning. I will ask you to do this as I talk to you about this case. I hope to be able to respond to some points that Mr. Guarisco made. But [1019] I think they will be tied in with some other things that I would like to tell you.

The first thing that's on my mind: Everybody in the courtroom has got something they have to do. Each one of us has a job that we have to perform.

The fact that I represent Joe Elton Nixon does not mean that I don't have normal human feelings, and it doesn't mean that I am not as upset by the evidence that you've been exposed to, as you have been. Tears flow on both sides of that rail for a human being. All life is precious. The fact that she's no longer with us, to share in the joys of her friends and relatives, to share the pain they have, is equally painful for all of us. And nothing, nothing can ever repay that.

You might say, "Well, that's kind of weird for Corin to seem to be upset about that."

Well, that's the way it is. And let me tell you a little bit about why we are here today, in terms of what capital punishment is all about.

We've had capital punishment in this country, in various states, for as long as we've been around.

Back in 1972, the United States Supreme Court said we couldn't have it any more. Those of you that believe in capital punishment, you just haven't been [1020] doing it right, folks. It was freakish and randomly applied. There were racial motivations. There were perhaps statistics that showed that some people had been treated unfairly in the application of capital punishment as we knew it 13 years ago. So they threw it out.

And there were perhaps 100 people on Death Row in Florida at that time, and they pretty much all received automatic life sentences, no matter what horrible things they had been convicted of.

Well, the State's response, at least Florida and many other states, to that action of the U.S. Supreme Court was to convene a meeting in Oklahoma City, back, I think, in the early fall of 1972, and many, many, attorneys from the various

Attorney General offices throughout the country gathered in there and they respond, "How can we start this killing process, this capital punishment, up again? What is it that the United States Supreme Court said was so unfair that they had to throw the whole thing out?"

Well, there were two schools of thought on that. One school said, "Well, gee, the problem with capital punishment is that people treat it unfairly."

That is, you may do something, and I may do something, and one of us gets a certain sentence and [1021] one of us does not. I could be sexually motivated, racially motivated or economically motivated.

"So what we need to do is, anybody that does a murder, we kill them. That would make it fair, wouldn't it?"

There was another school of thought, which ultimately prevailed in Florida, that, "No, that's not the proper response. You don't take the life of all human beings who took the life of someone else, because that only looks at the aspects of the offense, and not the aspects concerning the offender."

So Florida opted for the system that the Judge has advised you of and the procedures that we're going through today. That is, you have guidance for your deliberations. There are aggravating factors and there are mitigating factors, to give society a control, so that all who do certain things aren't treated the same way. It's not proper, as the courts have now ruled. That's why we have various arguments.

The attorneys for the State, their function is to present the facts of the crime to you, and to focus your attention on the crime. That's their job.

My job? In fact, I consider it a privilege and honor to be involved in a system where we can have two sides to the story. But a lot of people don't like my [1022] side because what I have to do is present the side of the accused. In fact, he's not accused any more; he's convicted. He's four times convicted by y'all.

That's my job. And that's why we are about this business today.

Regardless of your beliefs about the death penalty, I think all of you told me during your voir dire that there were certain offenses that automatically the person should be executed for, and some, and you thought not. And the Judge questioned you about it and you indicated that you would abide by the Court's instructions and you would consider all the aggravating and all the mitigating circumstances. And that's what we are doing here today.

Now, the Judge is going to give you instructions about the aggravating circumstances, he's going to give you instructions about mitigating circumstances.

Mitigating circumstances are unlimited. Unlimited. So if I don't bring to your attention all of them with what I think are somewhat mitigating circumstances, then perhaps you have thought of others. And these, whatever they are, don't have to be proven beyond a reasonable doubt. You only have to be reasonably convinced of their existence. And if you [1023] are, then it is very proper and in accordance with your duty that you should find that they exist, and you will consider those in light of any aggravating circumstances that you will consider.

But there is a different standard. And if you are reasonably certain that they exist, then they do exist and you should consider them.

Intelligence. IQ. You've had conflicting testimony. I think that's actually a mitigating circumstance.

Doctor Doerman, I think, testified that his testings revealed a 74 IQ, borderline intelligence.

Mr. McKay, it's apparent, was relying on previous recorded records from at least nine years ago, thought the IQ to be about 88.

There is a rational explanation for that potential deterioration. And that is, it's uncontested that sometime during one of his various incarcerations, Mr. Nixon was hit in the head with a pipe. And I think it's pretty obvious that that would not only affect the testing level, but also should be considered with the evidence of brain damage.

Now, I've asked you to do almost an impossible task in assessing –

I called Doctor Ekwall and I called Doctor [1024] Doerman. And Mr. Guarisco is right. There are inconsistencies in what they told you. They couldn't firmly conclude.

Now, if there's evidence that I "hired it done," so to speak, that I tried to get the best of all possible experts to come in here and puff my client, boy, that is just flat not the case. Because if I could have arranged more diverse testimony, I certainly couldn't have called on two doctors to have done it better than they did.

But the question is not whether they disagreed. The question is whether you can be reasonably convinced that some of what they said is proper. And I think you will find that.

Education. Now, you can look at Exhibit No. 28 and you will see that, consistent with the fact that there may be some

intelligence problems, brain damage or dysfunction, you will see that at about age 14 or 15, Joe Elton Nixon was operating educationally at no greater than a third-grade level, and perhaps closer to the first-grade level.

Age 23. That's the man I'm going to ask you to consider now. He's lived what, for all the world, would appear to be a life of crime since he was 10. But I think when you take a look at Defense Exhibit [1025] No. 1, you will see that, in many ways, Joe Elton Nixon never grew up from what he was at that point.

Emotional disturbance or impaired capacity. Now, that may turn you all off by thinking that, well, again, this is something that the shrinks would come in and – "Oh, yeah, well, you know, Joe tells them whatever he wants, and they're going to come to a conclusion that is going to be beneficial to him."

Well, that is absolutely not true. You are going to look at their reports. You can read each and every line. And if Joe Nixon was fabricating a cockamamy story for these doctors to help save his life, he certainly would have expressed some remorse. He certainly would have done something to lead them to believe that he was a worthwhile human being. Which they pretty much conclude he's not.

In terms of the normal society, he's a danger, he should never get out, there can be no control over him. And they're right. They're right. They're absolutely right.

In fact, what else happened in this case? You know, the State wants to have it both ways. And it's probably not correct to say – For instance, we have Major Campbell coming in to rebut the evidence that perhaps Joe Nixon had been using some type of [1026] intoxicating substance - alcohol, drugs or whatever - saying, "Well, gee, when I arrested him on August the 14th, he wasn't inebriated. I smelled no odor of marijuana or other intoxicant. He did appear to be sleepy. And that was

obvious throughout the statement. His eyes were not dilated. And I don't think he was under the influence."

Well, of course, he is going to tell you he is not under the influence. Because if he was under the influence, the Judge probably wouldn't have admitted the statement because, you see, the statement wouldn't have been voluntary.

He's testifying as to what occurred two days after the offense, and not what occurred immediately preceding the offense.

But if you want to adopt the notion that Joe Nixon is a terrible person and didn't want to do anything responsible, then why did he cooperate with the officers? He didn't resist arrest. He was at the home. They came in. He did nothing to harm anybody.

He gave what turns out, when transcribed, to be approximately a 51-page statement, which has some horrible things contained in it. But what else does it have in it? I'll tell you what else it has [1027] contained in it.

If he was such a devious person, with no responsibility – and I think maybe he is, and I'll get back to that in a minute – why did he tell the officer where the scene is; why did he tell the officer where he threw the gas can, and why did he tell them where her keys were to the car, so they could go out and tie him into this horrible deal? Why did he do that?

I suggest that he did that because he's nuts.

Now, that's not a nice thing for a lawyer to say about his client. But I think that's pretty obvious. He is in and out so often that – And he does atrocious things, and then he does other things.

The officer says, "I went out to the house pursuant to this call." Which, when you read – I think it's Exhibit 50 – you'll see he called because he thought he was going to hurt someone.

Well, he didn't. But maybe in his distorted sense of reality, he anticipated that he might. Of course, the officer gets there and he calms the situation down. And there's nothing going on. I don't think he needed a ride to town because it's not really out of town; there's no evidence that he ever went anyplace other than stayed there that night.

And then we have the officer who testified [1028] about the attack on Wanda the day before the death of Jeanne Bickner.

"Oh, it's just another French Town incident."

No, it wasn't just another French Town incident. What's that supposed to mean? Another French Town incident.

Certain people live in certain areas, or happen to be in certain areas. No, I don't think that's right.

He was a wild man. It took two officers, the testimony was, and two civilians, to hold Joe off of Wanda. Now, she wasn't injured. She wasn't injured. And they took her to the police station and said, "That's just another French Town incident and he meets the criteria for release on recognizance."

Now, I mentioned to you in my opening statement that Joe Nixon has slipped through the cracks of our system. And that's one more crack he slipped through. He should have never been released because, as you know, the evidence shows that he was on bail, awaiting sentencing as a habitual offender for the crime of attempted burglary of a dwelling, and he was on 20 years probation for armed robbery out of the State of Georgia.

Now, we've got sophisticated computer equipment. [1029] All they had to do was push a button to find out that Joe Elton Nixon shouldn't have been released.

And I'm not blaming the officer. I'm not blaming the officers. They did what they thought was, in their best judgment, proper.

All I'm saying is, he slipped through, once again, the cracks of the system.

After he was released, he calmed down. He's wild, and then he's calm.

That night, what happened, Wanda testified – and, sure, she loves him – but she testified for the State. And I have no reason to disbelieve the testimony she gave you when she gave you evidence that can put her loved one in the electric chair. I don't disbelieve – I think she told you the truth for both sides.

But what did she tell you? She told us that that Saturday night he was acting crazy, he was hiding behind dope, beer or whatever. She and John, his brother, spent the night in a motel and didn't return home until the next day.

And what happens the next day when she arrives home almost at the same time that Jeanne Bickner is being abducted? She finds crazy notes, bizarre notes. Now, they've disappeared. I wish we had those to show you. But I certainly have no reason to disbelieve her [1030] testimony about that. Of course, that's unrebutted.

He's so cunning? Why did he keep the car? Why did he do all the things that were going to lead everybody to him? Why did he repeatedly confess? If he is so devoid of some responsibility, then why, in his statement, when the officers, knowing – In fact, they were kind of putting him on a little bit

there. They said, "Well, Joe, why don't you tell us who else you told about this?"

And he did, he said, "Well, I have told Wanda and I told John. But I don't want to get them involved."

I don't know. He's somewhat responsible. And then sometimes he's incredibly and terribly irresponsible. He's a murderer.

Lack of remorse. Now, the State makes much of that. And that's in the doctor's report, and you're going to see that. And probably the saddest thing that you'll see in those exhibits, when you look at them – and I hope and trust you will – is that in Doctor Doerman's report, when he questioned Joe Elton Nixon about the death of Jeanne Bickner and he was asked to express his three wishes, Joe says, "Oh, I wish I was free," he said, "I wish I was a boxer," Joe said, "I wish I had a son."

But he never said he wished Ms. Bickner hadn't [1031] died. Now, that's not normal. That's not even close to rational. That is not a conniving person. That's a sick person.

Now, he didn't show up for his trial. He did show up for the first day, and he did show up part of another day. He didn't come in this courtroom when any of the people he knew had been led in to testify. And I don't know whether that's evidence of he didn't want to put them through the confrontation of having to look him in the eye, and, perhaps, the cause of his death. That could be responsible. Or perhaps he is totally unremorseful. That would be irresponsible. I can't explain it.

But what I do think, it's not normal. It's not rational.

His mamma realized he wasn't right, early on.

And Mr. Guarisco indicates, "Well, there's some reports early on that his mom said, 'Well, I didn't think there was any problem.'".

I would be tough for a mother to say, "My kid is weird, my kid is strange, and I have failed as a mother." It would be a terrible, terrible thing for a mother to have to do in front of a crowd. But I do think she told her story here to try to help her son. I think it's pretty obvious that she didn't really want [1032] to come here. She didn't do anything to really hurt or help Joe.

She testified, as a mother, that she did the best she could. But that failed.

And, you know, that's all kind of said. As you'll see from these documents here, she failed with a lot of other children. So perhaps there is some problem there that she couldn't meet, or perhaps some organic problem in the family.

Now, I'm not going to blame society for Joe Elton Nixon. I'm not going to blame institutions. But it's pretty obvious that all the exposure to the various institutions, the homes, church, school, the prisons, the jails, obviously didn't take, for whatever reason. It didn't work.

But as against an argument that all this has been recently fabricated. I'm only sensitive to the death of Jeanne Bickner. It all of a sudden becomes a little bit strange.

I want to read to you just a few excerpts from the documents that you will have an opportunity to see.

1972. Psychiatrist, James Griswold, Dozier School:

> "I have no suggestions for ways of working with him. He seems bewildered and uncertain. [1033] You ought to check out his physiological condition."

1974. Exhibit 7. And these, again, are excerpts. I don't try to mislead you. I want you to read all of them, to give you a clear picture. But it is my turn to make my argument. And I think you need to be aware of certain things.

Doctor Elizabeth Stribling:

"Intellectual functioning below average. Performance on measures of visual retention and perception very poor. I can't rule out physiological condition. A structured environment may be the only way to keep him from being a behavior and management problem.'

1974. Exhibit No. 8:

"– in need of 24-hour supervision."
At that point, he was 13 years old.

Exhibit 12:

"What will happen to your child if not helped at this time?"

"He probably will be institutionalized most of his life."

And, in fact, he really should have been, shouldn't he?

1974. Exhibit 14:

[1034] "Repeated mention of a perceptional problem, not definite enough to have indicated need of neurological testing, but which might point to emotional blocks."

"– little reality in the way he relates cause to

effect."

"– one cannot seem to learn from his mistakes."

Well, that diagnosed Joe Elton Nixon. That was 11 years ago.

Doctor Tom Heiman, a psychologist, was asked to examine Joe Elton Nixon in 1975, because Joe had been acting out. I guess that's a psychological term for being bad, doing something wrong. And he said:

"He begins to tremor and show other unusual emotional responses to corrections. He has not internalized any parental values or restrictions on thought and behavior or ego development."

Job – and you'll see in those documents – is the name his mother gave him. But through the years, he came to be known as Joe Elton. I think it's probably because of a birth certificate foul-up. But he's referred to here as Job. "– will never meet the criterion of a good, well-behaved out-of-sight, out-of-mind adolescent and so we close by just wishing you luck."

Just luck. I don't give you any good thoughts on [1035] how to deal with this. Just good luck.

I'm not blaming anybody. But that's another indication that the system hasn't worked.

1975. "Seriously disturbed in terms of perception and reality."

Exhibit 26. Robert Newkirk, a local counselor.

"In view of the type behavior displayed by this youth, there is substantival doubt as to his soundness."

And I want you to pay attention to Exhibit 31. That is the document from Roy McKay, the man you testified for the State in rebuttal. I want you to read – In that exhibit, he sent a long memorandum, as the Assistant Superintendent of Dozier School, to Lenox Williams, who, at that time, was the Superintendent of Dozier School, detailing Joe Elton Nixon at that time. And that's not consistent with what his testimony was yesterday.

Part of it, he said, he can function under very strict supervision.

March of '76. A letter from William Cummings, a local youth counselor to the institution. It's Exhibit 32.

Now, to give you a bit of background on this:

In 1975, Joe had been released from - I think it [1036] was Camp E-MA-CHAMEE, after a long stay. He had a long stay there. He was only on the street for a short period of time and went out and did some crimes - arson and other terrible things. And they immediately committed him back to the boys' school, to get him out of the community.

When he got to the school, he was working his way through the system again, behaving himself. But it was pretty obvious that he wasn't ready to come out, nor was the community ready to accept him. The letter states, in part, that,

> "Should Job return to this community any time soon and become involved in similar law violations, he will, no doubt, be certified to the adult system, if he is fortunate enough to remain alive."

You will also find, in 1972, that they predicted that not only would he probably not ever be able to remain alive in society, but that other people might be hurt because of him.

So all of this has been predicted, but none of it has been prevented.

But it can be, now.

At the very least, Joe Elton Nixon is presently serving a 13-year prison sentence. If he has your [1037] recommendation and it was honored by Judge Hall to sentence him to life, he would have to do life. I can assure that that would be consecutive to any sentence he is now serving. So it would be another 25 years, then, even if they ever considered him for parole.

But I can safely assure you that the transcript of this trial will go on to other courts, and perhaps will be sent to paroling authorities. And there is no way that Joe Elton Nixon would ever be released from confinement.

You've convicted him of kidnapping, you've convicted him of robbery, and you've convicted him of arson. These are very, very serious felony offenses for which he can be properly, perhaps extensively, sentenced by Judge Hall. And even after age 80, if they thought that it was time that Joe might be released from some form of confinement in Florida, Georgia will come for him and he will have to do 20 years up there.

And you might want to say, well, gee whiz, why should we throw him a bone? Why should we commend life, because all he's ever done is harm other people? He's obviously liable to harm somebody in the prison system.

Well, I would ask you – That is a concern. And sometimes jurors say, "If we give him his life, he might [1038] hurt someone else."

Well, I can't say that he will, and I can't say that he won't. I'm never going to lie to you. All I can do is rely on

records. And if you will review Exhibit No. 38 and 41, 42 and 43, you will see that never in his adult life, while incarcerated in the prison system, has Joe Elton Nixon ever received the first discipline in his report.

I don't know when the death penalty is warranted. But I think there is good evidence before you that – Well, the truth is, I don't think it ever is. But I guess you get that impression. But I don't think it's needed in this case. There are other ways to deal with it. And you can, by your recommendations – and you have by your prior verdict – create the opportunity for forever terminal final confinement for Joe, even though you may not think he is very deserving of that.

Now, today is Thursday. The trial has lasted about a week. All I've ever asked you to do is keep your mind open. I never asked you for anything more than that. And I promised you that I would try not to misrepresent anything to you. And I think I have, to the best of my ability, kept that promise.

I've shown you the good and the bad and the ugly, something that probably no jurors have ever seen in [1039] a case such as this, about a lawyer's client.

You made me promise, too. And you took an oath. That what that promise and that oath said was that you wouldn't decide this case until the proper time, and you wouldn't decide anything until you had reviewed all of the testimony and all of the evidence. And I'm asking you to do that when you retire to deliberate. And it's going to take you some time.

And I run the risk that a majority of you are going to look through those documents, because I trust that none of you have decided what you should recommend, and a majority of you look through those documents and you're going to say, "This man must die, this man must die, because of the horrible things that are contained therein."

But I pray that a majority of you will look at that and say, "This is not a case for the electric chair."

This is going to take some time because those 50 documents are lengthy. But you have the opportunity to do that, and I'm requesting that you do that.

Now, your advisory recommendation to the Judge does not have to be unanimous. He's going to tell you that. Don't be hasty. And even though some of you may have considered what ought to be done with Joe Elton Nixon, [1040] don't be hasty, because one vote could decide that point. It's not a unanimous situation.

If you want to recommend death, you'll have to do it seven to five; and if you want to recommend life, you will have to have six of you to do that.

Of course, I'm afraid that that's what you are going to do.

Doctor Doerman, I – I don't think he tried to tell you yesterday what you should do. I think he was pretty open and honest. And I did ask him, in response to Mr. Guarisco's question about whether he believed in capital punishment – I don't know what the purpose of that question was. But he said, yes, he did, but only for an intact human being.

And Joe Elton Nixon is not one of those. He's never been one of those. He never will be one of those.

You know, we're not around here all that long. And it's rare when we have the opportunity to give or take life. And you have that opportunity to give life. And I'm going to ask you to do that. Thank you.

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324

STATE OF FLORIDA,

vs.

JOE ELTON NIXON,

Defendant.
_____/

ADVISORY VERDICT

A majority of the jury, by a vote of 10-2, advise and recommend to the court that it impose the death penalty upon JOE ELTON NIXON.

SO SAY WE ALL this 25th day of July, A.D., 1985.

/s/
FOREMAN

The jury advises and recommends to the court that it impose a sentence of life imprisonment upon JOE ELTON NIXON without possibility of parole for 25 years.

SO SAY WE ALL this _____ day of July, A.D., 1985.

FOREMAN

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 84-2324-CF

STATE OF FLORIDA,

v.

JOE ELTON NIXON,

Defendant.
_____/

MOTION FOR NEW TRIAL

COMES NOW the defendant, JOE ELTON NIXON, through the undersigned attorney and pursuant to Rules 3.590 and 3.600 of the Florida Rules of Criminal Procedure and moves this Court for a new trial in the above-styled cause. As grounds for same, counsel would show as follows:

1. The Court erroneously excused prospective jurors because of their beliefs concerning capital punishment.

2. The Court erred in denying the defendant's motion for addition [sic] peremptory challenges.

3. The Court erred in admitting into evidence, over objection, certain photographs of the victim.

4. The Court erred in overruling the defendant's objection to the instructions given the jury concerning reasonable doubt.

5. The Court erred in failing to grant the defendant's motion for mistrial which was directed toward an improper remark concerning the victim made during the prosecutor's closing argument.

6. The Court erred by refusing to give the defendant's requested penalty phase instruction number 2.

7. The Court erred in admitting, over objection, the testimony of Detective Livings during the penalty phase of the trial.

8. The Court erroneously instructed the jury concerning aggravating circumstances during the penalty phase of the trial.

WHEREFORE, based upon the foregoing, the defendant prays that this Honorable Court will grant a new trial in this cause.

Respectfully submitted,

MICHAEL M. CORIN
Assistant Public Defender
Post Office Box 671
Tallahassee, Florida 32301
(904) 488-2458

(Certificate of Service omitted in printing)

[Supp. Record on Appeal, Case No. 67,583]

[2] IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

CASE NUMBER: 84-2324

STATE OF FLORIDA,

vs.

JOE ELTON NIXON.

Defendant.
_____/

PROCEEDINGS:	Hearing
BEFORE:	The Honorable J. LEWIS HALL, JR. Circuit Judge
DATE:	December 19, 1988
LOCATION:	Leon County Courthouse Tallahassee, Florida
REPORTED BY:	ARTHUR W. GREEN Official Court Reporter

ARTHUR W. GREEN
Official Court Reporter
Leon County Courthouse
Tallahassee, Florida 32301

[3] APPEARANCES

JAMES HANKINSON, Assistant State Attorney; RAYMOND MARKY, Assistant State Attorney; and ANTHONY GUARISCO, Assistant State Attorney, Leon County Courthouse, Tallahassee, Florida; appeared on behalf of the State of Florida.

T. WHITNEY STRICKLAND, Attorney at Law, 316 Williams Road, Tallahassee, Florida; appeared on behalf of the Defendant.

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[4] PROCEEDINGS

THE COURT: All right. We will proceed with the case of Joe Elton Nixon, Appellant, v. the State of Florida, Appellee, a Supreme Court Case No. 67583.

This matter came back to Court on an initial order of relinquishment of jurisdiction remanding it to the Circuit Court for the purpose of an evidentiary hearing in connection with Mr. Nixon's claim of ineffective assistance of trial counsel.

A review of that order indicated the desirability of perhaps more specificity with respect to the Supreme Court's desires.

It was followed by a subsequent order in which the court clarified its previous order. They say that there needs to be a hearing conducted, and noted that the Appellant, Mr. Nixon, has the burden of establishing the claim of ineffective assistance of counsel.

Mr. Nixon, therefore, would be the proponent of witnesses, with the State having the right to cross-examine those witnesses.

The trial court could make further inquiries that were deemed necessary.

Under that rather encapsulated and general scenario, [5] it would appear Mr. Strickland as counsel for Mr. Nixon you have the burden of proceeding at this point.

Are there any preliminary matters that we need to have clarified or brought up before we proceed?

MR. STRICKLAND: Yes, sir, Your Honor. I would like to interpose an objection for the record. The Appellant, once

again, interposes an objection to these proceedings because they represent an expansion on the scope of the limited issue brought by the Appellant on appeal.

The issue on appeal concerns the issue of record consent pursuant to U.S. v. Cronic. The issue is not ineffective assistance of counsel brought pursuant to Rule 3.850. I would also object on the basis of attorney/client privilege.

If this were a typical ineffective assistance of counsel –

THE COURT: Wait a minute, let me get a clarification. When you say ineffective assistance – the confidential relationship of counsel – I presume you are speaking of the confidentiality of the communication between Mr. Nixon and Mr. Corin, would I be correct in that?

MR. STRICKLAND: That is correct.

[6] THE COURT: And maybe in some degree the confidentiality of communication between Mr. Nixon and you.

MR. STRICKLAND: That is correct, Your Honor.

Your Honor, if this were the typical 3.850 ineffective assistance of counsel issue, it would be appropriate for capital collateral relief to be proceeding with this and it would not be limited for the purpose you have just noted.

Accordingly, having so objected, as we have objected, we would reiterate now objections that we have made both to the appellate court and to this court at various previous hearings.

I would note for the record that we are here specifically pursuant to two orders of the Florida Supreme Court dated October 20th, 1987 and dated October 4th, 1988.

We view those orders as directing a limited inquiry as to whether Mr. Nixon knowingly and voluntarily consented to the statements made by Mr. Corin at trial.

Accordingly and totally pursuant to those orders we will proceed with this matter.

THE COURT: You are the party – under the Supreme Court clarifying the order, you are the party with the burden.

[7] MR. STRICKLAND: We are here pursuant to that order; yes, sir.

THE COURT: And therefore to some degree the parameters of this hearing will be governed by what you put on.

MR. STRICKLAND: That is correct, Your Honor. But we are here pursuant only to the order of the Supreme Court. I would like to reiterate at that time it expands the scope of the issue which we brought before the court. Thank you, Your Honor.

THE COURT: In what way – I was reading from the order, the Supreme Court's order. They are the ones who sent it down here.

MR. STRICKLAND: Yes, Your Honor.

THE COURT: If it is a contemporaneous objection then it is overruled.

MR. STRICKLAND: Thank you, Your Honor.

THE COURT: I assume the Supreme Court is capable of addressing itself clearly. This matter was briefed and presented before them before they issued the second order; is that not correct?

MR. STRICKLAND: Yes, Your Honor. But I think it is very important to reiterate that objection at this time so I did so.

THE COURT: I understand that you need to make [8] that for the record. The Court notes your objection but will comply with the order of the Supreme Court.

Any comments from the State?

MR. MARKY: Yes, Your Honor. Since there was mention of confidential communication, I would like the Court to have a copy of Turner v. State out of the Florida Supreme Court, 1988 in September of this year.

Your Honor, the Florida Supreme Court in that case relinquished jurisdiction while the appeal was pending regarding whether the defendant involuntarily absented himself from the trial.

They've got down "Defense counsel asserted the attorney/client privilege. The Florida Supreme Court remanded it the second time and indicated that the claim of ineffective assistance of counsel removed all the confidentiality privilege, and the lawyer was obligated to testify."

I just wanted that in the record in the event it is asserted again at some later juncture in this proceedings – I want the Court to be aware of that.

They cited an old First DCA case, and there are several federal cases on the same subject that I would be more than happy to go into with the Court, if the Court sees fit. But I think the 1988 opinion [9] of the Supreme Court together with the order they sent to this court are applicable.

THE COURT: Well, let me check with both counsel. Now, you filed a 3.850 claiming ineffective assistance of

counsel, and the Defendant personally signed that motion under oath. At that time it is the Defendant who is saying that my representation at trial through counsel was ineffective – I had ineffective assistance of counsel; is that not correct?

MR. MARKY: In a normal situation that would be.

THE COURT: But, I mean, that is a statement by the Defendant and therefore we know at that point we have a defendant who is contending ineffective assistance of counsel.

Thus far, I find nothing in the record , other than the Appellant's point having been raised, of ineffective assistance of counsel – that Mr. Nixon has made any claim of ineffective assistance of counsel.

MR. STRICKLAND: Your Honor, if I may respond.

THE COURT: Yes, sir.

MR. STRICKLAND: Your Honor, this is obviously not a typical 3.850 proceeding, it is not a 3.850 proceeding at all.

We are here pursuant to the order of the Supreme Court – the issue that was raised on appeal was a [10] chronic [sic] issue which raised the issue of whether there was required to be an on-the-record consent.

Accordingly, the objection I interposed does not waive the attorney/client privilege. We are here specifically to the two Supreme Court orders, which I previously noted. Thank you.

MR. MARKY: Your Honor, I would like to make one further point. The Supreme Court cited from the Turner opinion which was then not published in Southern Second, its original order. It also cited the rules governing attorney conduct.

"Upon order of the court, counsel can make representation and testify about those matters between he [sic] and his client."

When this order first went up the Florida Supreme Court sent it back and you sent it back up. The State filed a brief and correctly pointed out that there was a challenge to the competency of counsel which required a resolution – now, they can't come in here and claim one thing and then keep the State from presenting other evidence. In fact, the State told the Court that we understand that Mr. Nixon was wanting to limit the issue of consent. The Supreme Court disagreed and we modified the order.

Now, if he is merely re-asserting the original [11] issue, and that is that the record had to show at that time – I would submit there is no reason for the hearing. But if Mr. Nixon is going to testify, Your Honor –

THE COURT: Well, I can cut that short. I presided at the trial.

MR. MARKY: I understand that.

THE COURT; And if there is an issue as to whether there was a request for that determination to be made during the course of trial, the answer to that is no, there was no such request. If the question is did the Court initiate such an inquiry on its own, the answer to that is no, the Court did not. If the question is regardless of where, was there such a colloquy engaged in and was there such a determination made, the answer to that is no, there was not.

So for that purpose there is no need to have an evidentiary hearing, if that is –

But I have an order from the Supreme Court of Florida that says we are going to conduct an evidentiary hearing and it says that the witnesses that will appear at that evidentiary hearing will be those called by the Appellant, Mr. Nixon. He bears the burden and will be the proponent of witnesses and the State may cross-examine those witnesses.

[12] So at this point I would turn to Mr. Strickland and say, who is your first witness?

MR. STRICKLAND: Your Honor, I would like to make a response, if I may.

THE COURT: All right.

MR. STRICKLAND: The second order is strictly procedural. The last sentence of that paragraph indicates that when it was sent back by this Court, it was sent back for a clarification procedure contemplated by the Supreme Court. It is procedural, Your Honor, and –

THE COURT: Well, explain to me what you are telling me.

MR. STRICKLAND: Mr. Marky, I believe, indicated to the Court that they had a right to proceed with other witnesses. In support of what I view as the court's ruling in the second order of the Supreme Court is that essentially, as I understand it, the Court is ruling that it is my obligation to go forward and be the proponent of the witnesses.

THE COURT: That is correct.

MR. STRICKLAND: Thank you, Your Honor.

THE COURT: So call your first witness.

MR. MARKY: Do I understand the Court is saying the State will not be able to call witnesses?

[13] THE COURT: That is correct.

MR. MARKY: The State will not be able to call any witnesses?

THE COURT: That is correct.

I think we discussed that at a status conference and at that time I indicated that if your position was that the State was going to be able to call witnesses that you were going to make a proffer for record purposes, and that proffer could probably be made. But the Court will make no findings with respect to the testimony and –

MR. MARKY: Your Honor –

THE COURT: As I understand the order of the Supreme Court, the Appellant has the burden of moving forward. According to their language, "He will be the proponent of witnesses and the State would have the right to cross-examine."

That to me is not unclear at all.

If the State views that in a different interpretation and urges a proffer for record preservation purposes in the event the Supreme Court may have anticipated that or envisioned that in their order, then fine, they will have that preserved for record purposes. But I do not so view it and I will make no finding with respect to the evidence that might be [14] proffered in that regard.

MR. MARKY: Your Honor, the State would like to interpose at this time an objection to being denied the opportunity to call witnesses for the Court to consider.

I understand that you are following the order, but I need to state my objection.

THE COURT: I also under that under Florida's contemporaneous objection rule that if you don't utter those magic words at this particular point you will be deemed to have waived them. Therefore, I will now overrule your objection.

Now, shall we go back to the fourth call. Who are your witnesses?

MR. STRICKLAND: Your Honor, as I understand it, you have now ruled that there will be a proffer?

THE COURT: No, I have not ruled that there will be a proffer. I have only ruled, as I do in every case, that if for record protection purposes there is desired to be a proffer that I will entertain it. Sometimes there is professional proffer, which is an accounting of what is proposed by counsel.

In this type of case I don't prefer to do that. I want it on the record so there is not someone else saying what someone else said. If the Supreme Court [15] desires to make an examination of it then you all can hash that out before them and –

MR. STRICKLAND: In that case, Your Honor, I would ask the Court that I be permitted to interpose any objections which I may have to the proffer immediately prior to it.

THE COURT: Certainly. Now, who is your first witness?

MR. STRICKLAND: Your Honor, pursuant to our previously interposed objection, we would call Michael Corin.

THE COURT: Now, you are calling Mr. Corin with Mr. Nixon's consent and permission and thereby waiving the

attorney/client relationship? You are calling counsel who represented Mr. Nixon at the trial of this case.

MR. STRICKLAND: Your Honor, we are not waiving the attorney/client privilege. We are here, as I have indicated, pursuant to the two orders of the Florida Supreme Court, which have directed this hearing. We have interposed an objection as to –

THE COURT: Excuse me. Mr. Strickland, you are using the pronoun we. Now, who is we? Does that mean you and Mr. Nixon?

MR. STRICKLAND: The defense, Your Honor.

[16] THE COURT: Does that mean you?

MR. STRICKLAND: Your Honor, that means the defense.

THE COURT: That is not responsive to my question. In other words, if Mr. Nixon wishes to claim the attorney/client privilege communication – that is not one that is just there, he has to claim that.

MR. STRICKLAND: That is correct, Your Honor.

THE COURT: I need to know. Do you have the authority to claim that?

MR. STRICKLAND; Your Honor, I view that – respectfully, Your Honor – I do not mean to be evasive of your question, but that is a matter between the Defendant and his attorney and I do not wish to answer it.

If the Court rules that I must answer then I will do so under protest.

THE COURT: Has Mr. Nixon and Mr. Corin had the opportunity to discuss that?

MR. STRICKLAND: Your Honor, at this time Mr. Corin is not Mr. Nixon's attorney.

THE COURT: But he was at the time.

MR. STRICKLAND; Your Honor, he is not his attorney at all at this time. In fact, these proceedings are pursuant to – as I indicated, they are only to this [17] order.

I have indicated an objection as to these proceedings specifically based on the attorney/client privilege. Mr. Corin, if he takes the stand – we have called him pursuant only to those orders and there has not been a waiver at all of – we are calling him pursuant to the two orders of the court.

THE COURT: We are out of the orders now.

MR. STRICKLAND: But, Your Honor –

THE COURT: Excuse me. We are out of those orders now from an evidentiary standpoint. You are calling a witness.

MR. STRICKLAND: That is correct.

THE COURT: Even under your interpretation of those orders, you are calling a witness. You are calling a witness who was formerly counsel to this defendant and out of an abundance of caution I am asking you now does that or does that not – is that or is that not accompanied by a waiver of confidentiality?

Because if you ask questions that places that in issue, then who is going to claim that confidential relationship on behalf of Mr. Nixon?

MR. STRICKLAND: Your Honor, the parameters of the evidentiary hearing that we have today are specifically directed by the order of the Supreme Court.

[18] THE COURT: That is correct.

MR. STRICKLAND: Accordingly, we have been attached with the burden, under protest – under the objection I previously noted with the obligation to go forward.

THE COURT: If you choose to.

MR. STRICKLAND: Your Honor –

THE COURT: It is up to you. You don't have to call any witnesses at all. It was the defense – the appellant that interposed the point at the appellate court that it had not been covered at the trial court level and it was remanded back for the relinquishment of jurisdiction to give the appellant the opportunity to develop a record so that the Supreme Court could review it.

In a sense, this hearing is for the purpose of giving you that forum should you opt to do so. Now, you can call witnesses, but you are not under any obligation to do it.

MR. STRICKLAND: Yes, sir, Your Honor.

THE COURT: You can fold your tent right now.

Before we get into a cat fight I need to know exactly where you are going to be coming from should you ask a question of Mr. Corin. You announced him and he got up and walked all the way up to the notch [19] in the door and then recognized I was about to move into another area, and then he sat down.

But if you ask a question that calls for the intrusion into the attorney/client confidential relationship and Mr. Corin says, I have not been informed that I am authorized to make that statement, it invades the confidential communication relationship, therefore I decline to answer that question.

Now, it is responsive to your question so – what I want to know is what is your position going to be? Can Mr. Corin answer your questions or not?

MR. STRICKLAND: Your Honor, for record purposes, I would ask the Court if it is the Court's ruling that in order for me to call Mr. Corin I have to waive the attorney/client privilege.

THE COURT: No, sir; not at all. That is a facet of testimony that I anticipate will probably come up. You can put him on the stand and ask him his name and occupation – you can ask him a number of questions that don't have anything to do with the attorney/client relationship between Mr. Corin and Mr. Nixon. So in that event that doesn't arise. I am only asking if that comes up what is your position going to be?

MR. STRICKLAND: Well, Your Honor, my position is that we are here, as I indicated, pursuant to two orders.

[20] If the Court will not direct Mr. Corin to answer the questions except if the defense waives in a limited fashion the attorney/client privilege then that is a different story. But I think perhaps it would be appropriate at that time – if Mr. Corin takes that position then we can approach it at that time.

As I indicated before, at that time there will be an issue which I believe the Court will have to rule on, and that is whether he has to answer without a waiver.

THE COURT: Well, you are going to ask the questions. Mr. Corin was not behind any doors, that I am familiar with,

when gray cells were passed out. The public defenders are a wide-open butcher knife referring to malpractice cases and I doubt I am going to hear Mr. Corin's testimony absent a waiver if he will claim it, which he may. I expect it. And at that point – you know, after a while the foil starts to get a little – why don't we go ahead and tee him up and see what happens.

MR. STRICKLAND: Thank you, Your Honor.

THE COURT: Mr. Corin, would you please approach the bench and be sworn by the clerk and then take the witness stand.

Thereupon,

[21] MICHAEL CORIN

having been first produced and duly sworn as a witness, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STRICKLAND:

Q For the record, would you state your name, address and occupation?

A Mike Corin. 2728 Everett Lane, Tallahassee, Florida. I'm an attorney.

Q Are you familiar with why we are here today, Mr. Corin?

A Yes.

Q Were you the defense attorney for Mr. Joe Nixon at the trial of this matter?

A Yes.

Q Did you tell him you were going to concede guilt and seek leniency?

MR. CORIN: Your Honor, I decline to answer that question based on the attorney/client privilege.

I am a little unclear. I was not subpoenaed by Mr. Strickland; I was subpoenaed by the State to be here, and of course they knew I would be here.

Reading the Supreme Court's order, at least the first order from last year, it indicated that privilege would not be waived unless I was apparently in a legal [22] proceeding where my effectiveness was challenged.

I have not seen any documentation or affidavits or anything as to that. I have not been released from my privilege by my former client for purposes of these proceedings.

MR. STRICKLAND: Your Honor, I would ask for a ruling as to whether he would be directed to answer the question that I posed without a waiver of the attorney/client privilege.

THE COURT: Well, let me put it back into context. You called the witness and you are proponent of the witnesses. Now, he has asserted this attorney/client communication privilege, which he may. But it is your question. Now, are you going to ask that I instruct the witness to answer your question?

MR. STRICKLAND: Yes, Your Honor.

THE COURT: Is your request of me to direct this witness to answer your questions considering the fact that you are counsel for Mr. Nixon, and you have raised the point on appeal. Now, are you in asking me to direct this witness to answer your

question waiving on behalf of Mr. Nixon the attorney/client privilege?

MR. STRICKLAND: At this time, Your Honor, –

THE COURT: You may answer yes or no. I would [23] direct that you so answer.

MR. STRICKLAND: No, not at this time, Your Honor.

THE COURT: In that event, then I will honor the witness' attorney/client confidentiality.

MR. STRICKLAND: In that case, Your Honor, the Defendant, under protest and the previous objections that I have indicated and communicated and the protest of the waiver of the attorney/client privilege – at this time the Defendant so waives the attorney/client privilege to the limited extent of the questions which I will ask.

THE COURT: If you waive the attorney/client privilege, then I would like to hear argument as to whether you may limit that waiver. I am of the view that a waiver of the attorney/client privilege acts as a waiver of that privilege insofar as the door being opened on cross.

In other words, it would not be appropriate on cross examination for a cross-examiner to go beyond the scope of direct simply because there has been a waiver of the privilege.

I don't know that you have the right to limit it beyond that. I think, yes, you may limit the attorney/client privilege testimony of Mr. Corin to the extent that it bears on the question that you are [24] asking and the subject matter which you broach, but once you open the door wherever there is normal evidentiary boundaries on cross examination, he may proceed to inquire.

MR. STRICKLAND: Your Honor, I believe my specific statement was under protest, as I previously – and I would reiterate that.

THE COURT: You can say under protest, but that doesn't make it under protest.

MR. STRICKLAND: The attorney/client privilege is waived to the limited extent of those questions that I ask. The issue –

THE COURT: Excuse me – well, proceed, excuse me.

MR. STRICKLAND: The issue as to what the State may do on cross is for a determination of the Court at that time.

THE COURT: Well, you may make your statement for the record that you are going to waive the attorney/client privilege and limit that waiver exclusively to the questions you will ask, but the order from the Supreme Court, which I am looking at, says that you are the proponent of witnesses and the State will have the right to cross-examine those witnesses.

My tentative ruling at this point, so that you [25] might be alerted – it is not a ruling, but if you ask a question that calls for that waiver and Mr. Corin responds to it then it is limited only by the usual application of cross examination rules. That is, there is a reasonable latitude of cross examination with respect to the testimony given.

So you may ask whatever questions you want to.

MR. STRICKLAND: Thank you, Your Honor.

MR. MARKY: Your Honor, we would object to any attempt to limit the State. I am also troubled by the fact that we don't have an inquiry from the Defendant personally. The

question comes as to whether he discussed this waiver or non-waiver of the confidential communication.

THE COURT: I have already covered that in the previous questioning of Mr. Strickland. That was, I wanted to know who was waiving and he said we, and there are two people over there. He said the defense, and there are still two people over there. I did not take it in this type of proceeding that Mr. Strickland would proceed without that authority.

MR. MARKY: Very well, Your Honor, but we do object that any answering of questions would be limited to –

THE COURT: I have already ruled on that.

[26] All right, Mr. Strickland, you may proceed.

MR. STRICKLAND: Thank you, Your Honor.

BY MR. STRICKLAND:

Q Mr. Corin, I would like to ask you again, you were the defense attorney for Mr. Nixon at the trial of this matter?

A Yes, I was.

Q Did you tell Mr. Nixon that you were going to concede guilt and seek leniency?

MR. CORIN: Your Honor, so I may be clear, am I free to answer that?

THE COURT: You are – upon request of the Appellant's counsel to the Court to direct you to answer that question, I am acceding to that request of counsel accompanied by the waiver of confidentiality.

MR. HANKINSON: I am sorry, sir. But so we don't get down the road and get into something unanticipated by the defense, we do anticipate even given the Court's ruling to take a proffer of Mr. Corin's testimony, albeit it may be limited – excuse me, our initial cross examination may be limited by the scope of direct.

I want to make sure it is clear that we intend to offer Mr. Corin as a witness for proffer purposes. It is my understanding of the Court's ruling that the [27] objection that could be interposed at that time would not be confidentiality between attorney and client in lieu of the fact it has been waived at this proceeding.

THE COURT: My response to that is only with respect to the rulings that I make now will that confidentiality be breached.

MR. HANKINSON: I'm not clear on that, Judge. Mr. Nixon has called Mr. Corin.

THE COURT: In other words, Mr. Strickland or Mr. Nixon has called Mr. Corin.

MR. HANKINSON: Right.

THE COURT: And he has directed – he has requested me to direct Mr. Corin to answer questions – the request has been made. To that end, Mr. Strickland having waived his attorney/client privilege on behalf of his client for direct response of the questions put to him – that is the extent of the waiver. You can call Mr. Corin all you want to, but if he declines to answer on the attorney/client privilege regardless of whether it is – I am not going to direct him to answer the question.

MR. HANKINSON: Judge, I don't believe a proponent of a witness can get up and say we want to waive the privilege a

little bit, which is essentially what, if I understand the Court's ruling, you are saying that he is going to be able to do. Once he waives the privilege, [28] Judge, the communications between them are waived.

THE COURT: All right. You all can fight about that back before the Supreme Court. I'm sure it will make an interesting argument.

Picking back up on the record in response to the witness' inquiry upon request of counsel for the defense, I am instructing you to answer that question.

MR. MARKY: To which, Your Honor, I object.

THE COURT: I am tired of listening. I want to hear what we are here for.

MR. MARKY: It is a different one, Your Honor –

THE COURT: Ask your question.

BY MR. STRICKLAND:

Q Mr. Corin, did you tell Mr. Nixon that you were going to concede guilt and seek leniency at trial?

MR. MARKY: Your Honor, I would object to the conclusion that counsel conceded guilt. I don't think that is accurate as to what occurred at trial.

THE COURT: Overruled.

BY MR. STRICKLAND:

Q Mr. Corin, did you tell Mr. Nixon that you were going to concede guilt and seek leniency at trial?

A I discussed with Mr. Nixon how I was going to approach the case.

MR. STRICKLAND: Your Honor, if I might have a [29] moment.

THE COURT: All right.

(Pause in the proceedings)

BY MR. STRICKLAND:

Q Mr. Corin, did you tell Mr. Nixon what you were going to say in your opening and closing statements.

A Not specifically. If you are asking me did I read him an outline of my opening statement, the answer is no.

Q Did you tell him what you were going to say.

A Not in exact words. I told him what I was going to do.

Q Did you tell Mr. Nixon that you were going to say to the jury in court at trial, "I think you will find the State has proved beyond a reasonable doubt each and every element of the crimes charged in first degree premeditated murder, kidnapping, robbery and arson?"

A If you are asking me if I told him those exact words, my answer is no, I did not.

Q You previously said that you told him how you were going to approach the defense.

A Yes, sir; I did.

Q I ask you again, and I will remind you that the Court has heard this question and has overruled the objection [30] to it, did you tell Mr. Nixon that you were going to concede guilt and seek leniency?

MR. HANKINSON: Objection. That's just repetition of what has already been asked and answered, Your Honor.

THE COURT: Overruled.

A Did I tell him how I was going to approach the case? Yes, I did.

If you are asking me did I tell him that I was going to go into court and say you're guilty and try to save your life, then probably not in those exact words.

BY MR. STRICKLAND:

Q When you told him how you were going to approach the case, did he affirmatively agree for you to do it that way?

A I have to phrase my answer as close to the truth as possible, so probably the best answer, he did not.

Q Did you tell Mr. Nixon that you would concede that the State would prove its case against Mr. Nixon?

A I think I answered that question earlier.

THE COURT: If counsel is not clear as to your response, I am going to direct that you respond to it.

MR. CORIN: Pardon?

THE COURT: I said, if counsel is not clear as to your response, I am going to direct that you answer it again.

[31]A Well, I think what I said is, I told him how I was going to approach the case.

The exact words that you are phrasing in your questions, I don't recall using those words.

Q Did you tell Mr. Nixon that on opening argument you would say, "In this case there won't by any question, none whatsoever, that my client, Joe Elton Nixon, caused Jeanne Bickner's death?"

A Did I tell him those exact words, no, I did not.

Q Did you tell him that that would be the approach that you would take?

A Are you asking me whether Mr. Nixon and I had conversations over the period of time that I represented him wherein how I was going to approach the case was discussed? Are you asking strategy?

Q No, I am not asking that at all.

What I am asking is the following: Did you tell him that you were going to make statements to the effect that they would concede guilt?

A Probably in the course of our discussions, he was informed on more than one occasion that that was how I was approaching the case.

Q Did he affirmatively agree for you to do this?

A Again, the best – the most honest answer I can give you on that question is, he did not.

[32]Q The question was , did he affirmatively agree for you to do this?

A I gave you my best answer.

Q Did he say, write or do anything to demonstrate his consent or approval of your doing this?

A Again, he did nothing.

Q Did he say, write or do anything to demonstrate his approval?

A He said nothing, he did nothing and he wrote nothing. He did nothing.

Q Did you tell him that it was his right to keep you from admitting guilt in saying the things which I quoted to you earlier – to keep you from doing those things?

A He was given the opportunity to express his displeasure or unhappiness with my representation and he did nothing.

Q Now, I have asked you a question as to whether you told him it was his right to keep you from admitting guilt and saying the things I have mentioned.

A I probably didn't phrase it that way.

Q Did you tell him that by approaching the proceedings this way that it would be tantamount – by saying rather –

Did you tell him that by saying those things, that you said in your opening and closing statements, that it [33] would be tantamount to giving up his right to an adversarial testing of the State's case.

MR. HANKINSON: I am going to object to the leading nature of the question. He has called this witness and –

THE COURT: Overruled.

BY MR. STRICKLAND:

Q Let me say that over, Mr. Corin.

Did you tell Mr. Nixon that your opening and closing statements would be tantamount to giving up Mr. Nixon's rights to an adversarial testing of the State's case against him?

A I don't know how to answer that question, I really honestly don't.

I mean, you are providing the answe. by phrasing the question. Mr. Nixon is not an unintelligent person and he knows –

Did I sit down and go through with him a litany like the Court might in taking a plea of guilty; no, I did not, if that is what you are getting at. But Mr. Nixon, I am sure, was aware of it.

MR. STRICKLAND: Your Honor, I have asked the witness if he told him he was giving up his right –

BY MR. STRICKLAND:

Q Mr. Corin, did you tell him he was giving up his [34] right to an adversarial testing of the State's case?

A The answer is – if I have to answer yes or no, I would have to say no because I don't think I gave –

Q Thank you.

Did you tell him what you were going to say on your opening and closing arguments would be the same as entering a guilty plea?

A No. I don't think it was.

Q Did you ask him the questions that a judge would normally ask him if he were entering a guilty plea before the court?

A I think I answered that. I didn't go through that type of inquiry with Mr. Nixon with regards to his case.

Q Did you tell him what rights he waived by your saying those things?

A I am not so sure any rights were waived.

MR. STRICKLAND: That is not responsive to the question, Your Honor. I would like for you to direct him to answer –

MR. MARKY: Judge, he is objecting to the answer of a question he posed. I think his answer is clear.

THE COURT: The objection is sustained. I would ask that he be responsive directly to the question.

MR. HANKINSON: But, Your Honor –

[35] THE COURT: I have ruled on the objection.

BY MR. STRICKLAND:

Q Did you tell Mr. Nixon what rights he waived by you making these statements.

A I did not sit down with him and say you are giving up your right to cross-examine witnesses or call witnesses in your behalf, those type of things. No, I did not go through a litany of those.

MR. STRICKLAND: Thank you, Your Honor.

THE COURT: Do you tender the witness?

MR. STRICKLAND: I do, Your Honor. Thank you.

THE COURT: Mr. Hankinson.

CROSS EXAMINATION

BY MR. HANKINSON:

Q How are you presently employed, Mr. Corin?

A I'm an assistant public defender.

Q And how long have you been employed as an assistant public defender?

A Total time or just most recent?

Q Most recent.

A I think 1979, December of 1979.

Q Let's go back and get a little background.

Where did you get your undergraduate degree?

A My associate degree was from Daytona Beach Junior College, and my bachelor's degree was from Florida State [36] University.

Q When did you get your bachelor's degree from Florida State?

A December of 1964.

Q And in what area?

A Criminology.

Q After that did you have any further studies before going to law school?

A Yes, sir, I went to graduate school at Michigan State.

Q And when was that?

A From 1965 until 1966.

Q Okay. What did you study there?

A Police administration and public safety.

Q At a graduate level?

A Yes, sir.

Q Did you have any work while you were doing that?

A At Michigan State I worked in Jackson Prison.

Q What did you do there?

A Reception counseling.

Q After finishing at Michigan State – when you terminated your stay there at Michigan State, where did you go.

A I came to Tallahassee, Florida in July of '66.

Q July of 1966?

[37]A Yes, sir.

Q What was our occupation after that?

A I was a regional supervisor in the division of youth services.

Q How long did you do that?

A A little over two years.

Q Did you do any further graduate work during that time?

A Yes, sir.

Q And what was that?

A In criminology.

Q At what school?

A Florida State University.

Q And when did you start law school?

A In the fall of 1968.

Q And when did you graduate?

A In December of 1970.

Q After graduating from law school, what is the first occupation you had?

A I was a research assistant in the criminology department at FSU.

Q For how long?

A For about nine months.

Q And what did you do there?

A We worked on a grant to see if we could have [38] regional correction centers in the Southeast.

Q And you finished there is believe in September of 1971?

A Yes, sir.

Q Okay. What did you do starting in September of 1971?

A I went to work for the Attorney General's Office.

Q And how long did you work at the Attorney General's Office?

A About four years and three months.

Q And what was your position there?

A An assistant attorney general.

Q And what were your duties?

A I worked in criminal appeals.

Q During the course of that did you handle any capital cases?

A Yes, sir.

Q Do you remember approximately how many?

A No, sir.

Q Where did you go after leaving the Attorney General's Office?

A Private practice.

Q How long?

A Approximately six months.

Q And did that involve some criminal work?

[39]A A very small amount.

Q And it took you up through July of 1976?

A Yes. In June of 1976 I began working part time in the Public Defender's Office.

Q And how long were you at that point an assistant public defender?

A A full assistant I think from July of 1976 until the following December of 1977.

Q And what did you do during that period of time?

A About half of my time was spent doing appellate work and the other half doing trial work.

Q And after that – in January of 1978 where did you go?

A With the Federal Public Defender's Office.

Q And was that criminal defense work?

A Yes, sir.

Q And how long did you do that?

A Eighteen months.

Q And that takes us up to August of 1979.

At that point what did you begin to do?

A I went back to work for the State Public Defender's Office.

Q And what were you doing at that time?

A Capital Appeals.

Q Appeal work to the Supreme Court?

[40]A Yes, sir.

Q And do you have any idea how many capital cases you did during that period of time.

A Direct appeals probably – well, it's hard to say, but on my own probably six or seven.

Q That took you up through when?

A I stopped doing those exclusively probably around June of 1981.

Q And what did you start doing after June 1981?

A Just trial work.

Q An assistant public defender on the trial level?

A Yes, sir.

Q And is that currently what you are doing?

A Yes, sir.

Q During the course of your legal experience – well, first as an assistant attorney general, did you do any teaching or lecturing?

A Yes, sir.

Q In what areas?

A We would lecture to law enforcement and other state attorneys on current procedures in effecting arrests.

Q You lectured to assistant state attorneys?

A Yes, sir.

Q Now, since being a public defender have you lectured at any conferences or seminars.

[41]A Yes.

Q At what conferences and seminars have you lectured?

A The Public Defender's Office sponsored what we called Life Over Death seminars. And that would be about every year or eighteen months, and that started somewhere around 1980.

Q Since 1980?

A Yes.

Q How many times have you lectured there?

A I'm not sure, but probably about four or five times at least.

Q Explain what that seminar is, Life Over Death.

A It is a meeting essentially of public defenders or people who work in capital litigation.

Q So these are people who pretty much exclusively are involved in representation of capital cases?

A Pretty much.

Q And you have lectured to that group?

A Yes, sir.

Q On four or five occasions?

A I think so, yes.

Q And in what area did you lecture on?

A Generally the update of the Supreme Court cases from the Florida Supreme Court.

[42]Q Have you done any lecturing or teaching at FSU Law School?

A I sometimes teach in Nancy Daniels' internship program.

Q Okay. For the record, what is Nancy Daniels' internship program?

A She is one of the persons at Florida State University College of Law who works with interns and she has a course requirement that they take before they intern.

Q So you have been selected by her as one of the people who come in and discuss – do you discuss plea negotiations?

A Yes, sir.

Q How often have you done that?

A Probably as long as she has been there I would do it once each semester. So it would probably be four, five or six times.

Q Have you taught at any continuing education programs?

A Do you mean like –

Q Like lectured CPE courses.

A Yes. I did teach at the Center for Professional Education a couple of years ago.

Q What was the nature of the topic?

A Capital litigation.

[43]Q Have you been called as an expert witness on a claim of ineffective assistance of counsel?

A Yes.

Q How many times?

A Twice.

Q And by whom were you called?

A The defense.

Q In both instances by the defense?

A Yes, sir.

Q In both instances were you qualified as an expert to give your opinion on such claims?

A Yes. Well, I –

Q You can explain yourself, if you need to.

A Well, as with any kind of a case a lawyer tried to get the witnesses to answer the questions his way and – I was qualified as an expert, but I wouldn't necessarily give the answers that they wanted.

Q You weren't called upon – you didn't agree to give a specific opinion?

A No, sir.

Q But you were qualified as an expert by the court?

A Yes, sir.

Q And you testified?

A Yes, sir.

Q And both of those were ineffective assistance of [44] attorney that was claimed?

A Yes, sir.

Q You indicated that you have handled a number of capital cases on appeal, and I believe you indicated that you could not remember how many you handled as an assistant attorney general.

Have you tried any capital cases?

A Yes.

Q How many capital cases have you tried?

A Well, Mr. Nixon and – you mean alone or –

Q With someone or by yourself. One in which you had a substantial part.

A Two.

Q Have you taken part in any other capital cases?

A Well, when you say taken part in – if you mean ask questions then probably two times.

Now, if you are asking me, as an assistant public defender, do I discuss cases with other lawyers in the office and work on cases together; yes, we do. I can't count the number of those.

Q So it is clear for the record – prior to this hearing you were not willing to discuss the facts of your conversation with Mr. Nixon with me, were you?

[45]A No.

Q Now, you testified on direct that you discussed with Mr. Nixon the strategy that you intended to employ in his case; is that correct?

MR. STRICKLAND: Objection, Your Honor. Your Honor, I would object to that because I don't believe he testified as to strategy. He said his approach.

MR. HANKINSON: I don't see any difference, but I think strategy is the word he used, Your Honor. If that is critical we can get the court reporter to look it up and read it back.

MR. STRICKLAND: Your Honor, if I may, we specifically object to that because what we said was –

THE COURT: All right. We will take a break and let the court reporter review the record.

(Recess in the proceedings)

THE COURT: All right. Have we drawn the proper semantical conclusion?

MR. HANKINSON: Yes, Judge. We gave up trying to go back through this record. I would just rephrase it a little bit.

THE COURT: All right. It had all the earmarks to me of about one-third of a cup of coffee dispute.

All right, you may proceed.

BY MR. HANKINSON:

[46]Q I believe you indicated on direct that you discussed with Mr. Nixon how you were going to approach his case; is that correct, Mr. Corin?

A Yes.

Q Okay. What did you tell him about how you were going to approach the case?

MR. CORIN: Your Honor, am I free to answer that question?

THE COURT: That is within the scope of direct and within the scope of my direction.

On the previously-made objection by Mr. Strickland, and if he wishes to renew his objection, the objection will be overruled.

MR. STRICKLAND: Thank you, Your Honor.

BY MR. HANKINSON:

Q Do you need me to repeat that?

A Did I discuss with him how I was going to approach the case?

Q Well, what did you tell him, that is what I am interested in.

A Well –

MR. STRICKLAND: Your Honor, I am going to object as to what he told him.

What I asked Mr. Corin was did he tell him how he was going to –

[47] THE COURT: And he answered yes, which was an answer given in response to the question put to him on direct. The scope of cross is dictated by the responses of the witness and not necessarily the questions that were asked. That answer was given, and it is within the proper scope of cross.

I will overrule the objection.

MR. STRICKLAND: Thank you, Your Honor.

A Yes, I spoke with Mr. Nixon as to how I was going to approach it.

BY MR. HANKINSON:

Q And what did you tell him?

A I told him that if the State didn't accept a plea that my goal was to try to save his life, and to do that – we had a situation in which my belief was the evidence was very, very strong –

Q So that essentially is what you told him?

A Essentially.

Q How many different times did you discuss this with him or attempt to discuss this with him?

A Well, minimally – at least three times.

Q If I understood you correctly on direct you said that he gave no response at all?

A Right. He didn't say that is fine or that is bad or anything.

[48]Q Okay. I believe you indicated that you gave him the opportunity to respond or to object; what did you mean by that?

A Well, we discussed it more than one time; approximately three times.

You are a prosecutor and I don't think you have ever defended a client; isn't that right?

Q Right.

A Mr. Nixon and I had a relationship that went back prior to his arrest in this case. You get a feel for what your client understands and you have a knowledge of their situation and –

Q I guess I am not totally following you.

A Well, maybe I don't understand your question.

Q Okay. It was my recollection that you said that you give him the opportunity to object to this approach that you had laid out?

A Yes. I would state my theory of the case to him and my theory of the defense. Now, this is over a period of time

– well, it was over a period of months. I was never told not to do that.

Q During the course of the trial what level of cooperation did you get from your client?

MR. STRICKLAND: Your Honor, I object. I didn't ask about cooperation.

[49] THE COURT: I will sustain the objection.

MR. HANKINSON: May I be heard on that, Your Honor?

THE COURT: Yes, sir.

MR. HANKINSON: The question was whether the client agreed to a certain course of conduct, that is the way the question was phrased.

At another point the question was did the Defendant object. I think it does have bearing on whether he agreed or objected as to whether the Defendant was in fact cooperating with him during the course of the trial. That is the reason for my question.

THE COURT: Same ruling.

MR. STRICKLAND: Thank you, Your Honor.

BY MR. HANKINSON:

Q Prior to trial what level of cooperation did you have with Mr. Nixon?

MR. STRICKLAND: Your Honor, I object to the issue of cooperation prior to trial, that did not come up.

THE COURT: I will sustain the objection.

BY MR. HANKINSON:

Q You indicated that your discussion with Mr. Nixon – if the State would not agree then this would be your approach?

A I don't understand your question.

[50]Q Tell us what your approach was that you decided to take in the course of this trial.

A Well, my approach –

MR. STRICKLAND: Your Honor, I object. I did not get into what the approach was. What I asked him specifically was about the opening and closing statements – the specific statements he made at trial.

THE COURT: I will overrule your objection.

THE COURT: I will overrule your objection.

BY MR. HANKINSON:

Q Do you want me to restate the question?

A Yes, sir.

Q What was your approach?

A That I would try to minimize the State's guilt phase.

Q I believe you said you were going to take that approach if a plea was not offered or a plea was not forthcoming from the State; is that correct?

A Right.

Q Okay. Did you pursue plea negotiations?

MR. STRICKLAND: Objection, Your Honor. That has to do with a matter which I did not broach on direct.

THE COURT: I will sustain your objection.

MR. STRICKLAND: Thank you, Your Honor.

BY MR. HANKINSON:

Q Before you made the decision to approach the case [51] in this way, what investigation did you do of the case?

MR. STRICKLAND: Your Honor, we did not – Objection. We did not get into what Mr. Corin may have done or didn't do in investigating the trial.

That is an issue which is not before the Court and it would be appropriate for a collateral approach on a 3.850 motion. It is outside the parameters of the issue raised on appeal and the order from the Supreme Court.

THE COURT: I will only allow limited cross on that as to the motivation behind his approach to the case.

MR. STRICKLAND: Your Honor, if I may be heard – investigate the case.

THE COURT: He is only asking him did he investigate the case.

MR. STRICKLAND: Your Honor, I did not inquire as to whether he investigated the case. That is something outside the scope of my direct.

THE COURT: Overruled.

MR. STRICKLAND: Thank you, Your Honor.

BY MR. HANKINSON:

Q What did you do in your investigation of the case before you decided to approach the case in this particular way?

A I did what I normally do particularly in a [52] capital case.

I had my investigator interview witnesses and I interviewed witnesses also, and I did depositions.

Q Take many depositions?

MR. STRICKLAND: Your Honor, objection.

THE COURT: I will sustain the objection.

MR. STRICKLAND: Thank you.

BY MR. HANKINSON:

Q When you discussed with Mr. Nixon the approach that you intended to take did you ever discuss with him any other possible options?

MR. STRICKLAND: Your Honor, I did not ask Mr. Corin about any other possible options. That is outside the scope of direct examination.

THE COURT: I will overrule the objection as to that question.

BY MR. HANKINSON:

Q In your discussions with Mr. Nixon did you discuss with him other possible options other than the approach you decided to take?

A Such as?

Q Well, did you discuss with him the possibility of the reasonable doubt approach in contesting the evidence?

MR. STRICKLAND: Very respectfully, Your Honor, Mr. Hankinson is getting in to the issue of alternative [53] defenses. What Mr. Corin may or may not have done, that is appropriate – that is an issue which is only appropriate in the traditional 3.850 area.

We are going far afield now of what I asked Mr. Corin on my direct examination. Anything along the lines about a discussion about what Mr. Corin might have done or should have done or otherwise, that is a violation of the discussion I had with him on direct and it is a violation of the attorney/client privilege. It has not been waived as to what they discussed as to alternative –

THE COURT: I am going to overrule the objection. During the course of your examination, and it is on the record, you asked him among other things whether he had informed or advised Mr. Nixon of the variety of rights that he had. Included in that questioning was the right for an adversarial critique – that is one of the questions that you asked.

Within the ambit of that scope of the question and his response to it – did you advise him of certain other options that might be there adversarily emphasizing the reasonable doubt burden placed on the State, and any other matter of that nature -- I will overrule the objection.

BY MR. HANKINSON:

Q Did you have any discussions as to that nature, [54] Mr. Corin?

A Yes, sir.

Q If you would, just relate to us the essence of what you told him.

A My assessment of the State's case was that the State was going to be able to fulfill their burden as to his guilt and if we had to go to trial, if there was not going to be a plea for life, that the defense would be to try to save his life in the penalty phase.

I discussed with him all of these avenues.

Q All of what?

A These avenues.

Q They were discussed with Mr. Nixon?

A Yes.

Q You are indicating affirmatively?

A Yes.

Q Mr. Strickland, in his questions, asked you – I think the question was in the sense of, did you tell Mr. Nixon that you were waiving all of his rights.

Let me put the question in this sense. Did you believe you were waiving all of Mr. Nixon's rights?

MR. STRICKLAND: Objection, Your Honor.

Mr. Corin's belief at that time would have no bearing on what he actually said or did at that time. Your Honor, I did not, once again, broach that issue on my direct.

[55] MR. HANKINSON: Judge, the question was asked, did you explain to him that you were waiving his rights to trial, that you were giving up the right to make the State prove its burden?

I think the fact that this witness would say that he didn't give up those rights certainly has bearings on the fact that he didn't explain them to Mr. Nixon.

THE COURT: In response to Mr. Strickland's question, or one of several questions in that area, he said, no, I did not believe he was giving up any rights. He has answered that question once. But I will overrule the objection.

MR. HANKINSON: Okay. That answer was not clear to me that that was in the record.

There were three or four – there was a series of questions that –

THE COURT: I have overruled the objection.

BY MR. HANKINSON:

Q Did you believe that you were giving up those rights that Mr. Strickland proposed that you had given up by this?

A In a technical sense, probably not. But in a practical sense, probably so.

Q Did you preserve certain objections during the [56] course of the trial?

A Yes, sir.

Q Now, you mentioned that you had come to have some rapport with the Defendant or some understanding of how to relate to him because you had represented him for a long time.

How long had you been representing Mr. Nixon?

A I am not sure exactly when I began to represent him, but it was probably in the fall of 1983.

Q And why were you representing him at that time?

A On unrelated charges.

Q So you have represented him since November of '83?

A Yes.

Q And this trial took place when?

A In July of 1985.

MR. HANKINSON: If I could have just a moment, Your Honor.

(Pause in proceedings)

MR. HANKINSON: That is all the questions I have at this time.

THE COURT: Redirect, Mr. Strickland?

MR. STRICKLAND: We would rest, Your Honor.

THE COURT: Thank you very much, Mr. Corin.

Do you have any other witnesses?

MR. STRICKLAND: That will be all, Your Honor. Thank you.

[57] MR. MARKY: Does the Court wish to hear any argument on this matter?

When I read the first order, the first order asked the Court to make findings and conclusions. And the second order doesn't say not to.

THE COURT: The second order does not.

The first order was couched in terms of a judicial inquiry. The second order simply says an evidentiary hearing of the record for the appellate court to review. It appears that – there is simply nothing there for them to review and examine.

On the second order it appears, Mr. Marky, that I would be a presiding officer for there to be presented whatever the proponent of the witnesses might have for that court to review. There's seven of them and one of me so –

MR. MARKY: So it will go back as it is?

THE COURT: I invite comment on that.

My initial reaction is that it is to preside and allow presentation of that evidence for their further consideration in support of the position taken by the Appellant.

The issue of ineffectiveness of counsel was not raised at the trial level. I do recall at the close of the case where I think I made observation as to the [58] defense.

But at this point I do not see that it was placed upon the trial court any responsibility for making findings of fact or conclusions of law for them to review other than I have given everybody a chance to say their say, as I interpret the order, and this will now go back up. I assume oral arguments will be held by the Supreme Court and counsel will have their opportunity to present to the court the conclusions they draw from the evidence, and the court may draw its own conclusions. It's not for me to do that, as I see it.

If I am in error on that then I'm sure they will remand it and direct that I make findings of fact and conclusions of law.

MR. MARKY: Your Honor, if we might just have a moment.

(Pause in proceedings)

MR. MARKY: Your Honor, we will be communicating with the Attorney General's Office as to what legal argument to make since Your Honor has – I mean, this is it. They didn't ask you to make findings or conclusions or –

THE COURT: The one area that I have some – why I have some reference is because it was not remanded [59] back for relinquishment or jurisdiction for further proceedings with respect to an issue that presented itself to the trial court, but simply to supplement a record for their review.

Now, if it had dealt with an issue at the trial court level then I think it might in some way be appropriate to say yes, I now hear this and I find –

MR. MARKY: Your Honor, I would just note that the Court modified the ineffective assistance of counsel and – they selected relinquishment.

Ineffective assistance of counsel was never raised at the trial level during the trial at all. Now, why the Supreme Court of Florida didn't require the filing of a formal allegation, I don't know. But we have not had evidence –

THE COURT: I don't know either. And there's no 3.850 motion pending.

If there was a 3.850 then yes, it would be my responsibility to make that. But the Supreme Court did not cast it as a 3.850 and they didn't direct a 3.850 be done. They just simply said here it is.

MR. MARKY: But, Your Honor, they did send it back and relinquished the determination of facts surrounding his claim of ineffective assistance of counsel. That is broader than whether or not the [60] Defendant did or did not consent or did or did not object. We have really not had that hearing and – I'm certainly not placing blame on this Court, but I just think that – it is clear in my mind that the court meant this to be a traditional ineffective assistance of counsel.

3.850 is what revokes [sic] jurisdiction of the court. Well, the Supreme Court already had jurisdiction and it gave it back. That is what they did in the Turner case, that I cited to the Court; that was a relinquishment of jurisdiction. It went to whether or not he was personally present, which is also alleged in a 3.850.

This is perhaps a problem that the court – the Supreme Court deviated from what they have done in other cases, and that is to relinquish with 30 days to file a motion to vacate. But I would suggest they didn't do it so I guess we are stuck with the confusion that –

THE COURT: Okay. I think if they wish to have that then they will send it back rather directly. Otherwise, I think they

will review the record as it relates to the contentions of the Appellant on appeal. They will review it and draw their own conclusions.

MR. HANKINSON: If I may make one other comment so the record is not unclear when it goes back up.

The Court made mention of an option for us [61] proffering testimony, yet at the same time it indicated that the proffer would be limited by the attorney/client privilege.

Basically, the additional testimony would be – we would have proffered further testimony by Mr. Corin explaining his actions. I understand the Court's ruling and I am not trying to re-argue it, but I do want it clear on the record that that would essentially be the testimony to be proffered.

THE COURT: If you had called Mr. Corin even on a proffer, you wouldn't have gotten anything out of him other than what you got on cross.

MR. HANKINSON: I understand that. That is why I am trying to clarify it for the record.

MR. MARKY: For the record, we do object that on an ineffective assistance of counsel claim, the State is denied an opportunity to adequately present the evidence it deems would have been appropriate for a proper determination of whether Mr. Corin was ineffective or not ineffective.

MR. STRICKLAND: You will not request memorandum or argument, they will make the finding; is that correct?

THE COURT: Correct. We have held a hearing and the evidence has been presented. The issue at the [62]appellate level is was there or was there not. They will have the record before them and you may argue it.

MR. HANKINSON: Your Honor, would you direct that a transcript be prepared?

THE COURT: Yes.

(Thereupon, this hearing was concluded.)

[63] (Certificate omitted in printing)